

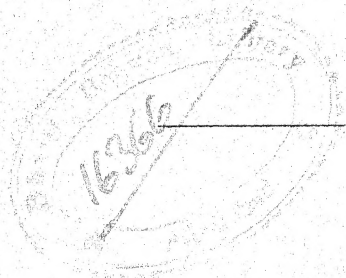
THE
HINDU WILLS ACT, 1870

(ACT XXI OF 1870)

(WITH THE CASE-LAW THEREON)

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THE HINDU WILLS ACT, 1870.

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* 6 B.H.C.R. 224, is wrongly printed as 7 B.H.C.R. 274 at p. 10.

† 5 M. L. J. 57, ought to be 5 M.L.J. 157.

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* 6 M I A 52, ought to be 6 M I A 53.

† At p. 13, 22 I A 107 is wrongly printed as 22 I A 732.

THE HINDU WILLS ACT, 1870.

(ACT XXI OF 1870).

[Passed on the 19th July, 1870.]

An Act to regulate the Wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and the towns of Madras and Bombay.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Hindu Wills Act, 1870.

(Notes).

General.

(1) **Statement of objects and reasons.**

For the—See Gazette of India, 1869, Pt. V, p. 32.

A

(2) **Report of Select Committee.**

For the—, which was ordered to be published by the Council—See Gazette of India, 1870, Pt. V, p. 11.

B

(3) **Proceedings in Council.**

For the—, See Gazette of India, 1869, Sup. page 1499; Sup. 1870, p. 76; Extra Supl. page 34, and Sup. page 957.

C

(4) **Act declared in force in the following scheduled districts.**

This Act has been declared by notification under S. 3 (a), of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:

The Districts of Hazaribagh, Lohardaga and Manbhum, and Parghana Dhalbhum and the Kolkhan in the District of Singhbhum—See Gazette of India, 1881, Pt. I, p. 504.

D

2. The following portions of the Indian Succession Act, 1865, X of 1865

Certain portions of Act X of 1865 extended to wills of Hindus, Jainas, Sikhs and Buddhists, namely,—
sections 46, 48, 49, 50, 51, 55 and 57 to 77 (both inclusive),
sections 82, 83, 85, 88 to 103 (both inclusive),
sections 106 to 177 (both inclusive), [and section 187]
shall, notwithstanding anything contained in section 331 of the said Act, apply 1—

(a) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after the first day of September, 1870, within the said territories of the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay, and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits.

(Notes).

General.

N.B.—The above section is printed with the amendments made by S. 154 of Act V of 1881 (Probate and Administration). The section, before the above amendment, stood as follows :—

The following portions of the Indian Succession Act, 1865, namely,—Sections 46, 48, 49, 50, 51, 55 and 57 to 77 (both inclusive), sections 82, 83, 85, 88 to 103 (both inclusive), sections 106 to 177 (both inclusive), sections 179 to 189 (both inclusive), sections 190 to 199 (both inclusive), so much of part XXX and XXXI as relates to grants of probate and letters of administration with the will annexed and parts XXXIII to XL (both inclusive) so far as they relate to an executor and an administrator with the will annexed shall, notwithstanding anything contained in section 331 of the said Act, apply—

(a) to all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after the first day of September one thousand eight hundred and seventy within the said territories, or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situate within those territories or limits.

(1) Applicability of Act.

The Hindu Wills Act (XXI of 1870) applies certain sections of the Indian Succession Act to those wills only that are mentioned in S. 2, clauses (a) and (b) of the former Act. 20 B. 674 (675). **E**

(2) Application of the Act to Bombay. Extent of Administrator-General's Act, 1874, operation of.

(a) The Hindu Wills Act, S. 2 (a), applies to all wills of Hindus executed in Bombay, no matter where the immoveable property devised may be situated. 9 B. 241 (243). **F**

(b) A will made in Bombay is subject to the provisions of the Hindu Wills Act. 12 Bom.L.R. 471. **G**

(c) A person claiming as a legatee under a will made in Bombay is not entitled to sue without taking out probate, as he would be bound by S. 187 of the Succession Act which is incorporated in the Hindu Wills Act. 12 Bom.L.R. 471. **H**

General—(Continued).

(d) But where the property comprised in the will is worth less than Rs. 1,000, and the legatee has obtained a certificate under S. 36 of the Administrator-General's Act to administer the effects of the deceased, such certificate entitles the legatee to receive the property. The provisions of the Administrator-General's Act is not affected by the incorporation in the Hindu Wills Act of S. 187 of the Indian Succession Act. 12 Bom. L.R. 471. I

(e) S. 5 of the Hindu Wills Act provides that nothing contained in that Act will affect the rights, duties and privileges of the Administrator-General of Bengal, Madras and Bombay respectively. 12 Bom.L.R. 471. J

(3) Executor of will of Hindu, position of, after passing of Hindu Wills Act.

After the passing of the Hindu Wills Act the executor of the will of a Hindu was in precisely the same position as the executor of a will of a European, in as much as the sections of the Indian Succession Act, which deal with the position and interest of executors, are made to apply to a Hindu's will. 21 C. 732 (755). (*Per Petheram, C.J.*) But see, also, 22 C. 788 (P.C.). K

(4) Executor of will of Hindu, position of, before passing of Hindu Wills Act.

An executor under a Hindu will, before the Hindu Wills Act came into force, is not in the same position as an English executor under an English will, and the property does not vest in him, he practically holds the property as manager. 25 C. 103. L

(5) Object of the Act.

The Act was not intended to introduce any material change in Hindu Law or to extend the testamentary power of the Hindus. 8 C. 637=10 C.L.R. 459. M

(6) Peculiar rules of construction of the Act.

The following observations of White, J., in 8 C. at pp. 640—642 are worthy of notice :—" In arriving at this decision the learned Judge has applied a canon of construction, which has long been applied in construing English Acts of Parliament, and which is thus stated in the case of *Reg. v. Bishop of Oxford*. A Statute ought to be construed, that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant.

I do not for a moment deny that that canon is the correct one to apply to many of the Acts of the Government of India, or that if it is the appropriate rule to apply here, the decision of the Court below is correct. But the Hindu Wills Act is not drawn in the ordinary form of a Statute, or indeed of an Act of the Government of India. It does not enact a series of provisions relating to Hindu Wills but, in point of form, it applies to certain Hindu Wills certain portions only of the Indian Succession Act, and it does this by mentioning only the numbers of particular sections and the numbers of particular parts or Chapters or portions of parts or Chapters of the principal Act.

The sections and parts and portions of parts so specified are applied bodily and in *globo* as it were, without any limitation and without any adaptation of the sections to the peculiar law or custom or circumstances of Hindus.

General—(Concluded).

Hindus were expressly excluded from the operation of the Indian Succession Act when it was passed, and although it is not improbable that the Legislature, even at that time, contemplated that, at some future day, the Act might be extended to Hindus, the Legislature must have considered in 1865 that the Act, as it then stood, was not in all respect suited for Hindus, otherwise Hindus would have been included.

It is obvious that an unqualified extension to Hindus of a large number of sections and parts of an Act, in its origin passed for persons other than Hindus, would be attended with some most unexpected and undesired results, unless the operation of the applied sections were controlled.

The third section, accordingly, enacts five provisos, the object of which as it appears to me, is to prevent, so far as Hindus are concerned, the wholesale application, as it were, of the section and chapters mentioned in S. 2 from directly or indirectly altering or affecting the Hindu Law in those matters to which the provisos relate, and from thus introducing changes not contemplated by the Legislature.

Hence, *in construing an Act of the Government of India passed in the form peculiar to the Hindu Wills Act, I think the sound rule of construction is to give their full and natural meaning to the provisos, and only to give effect to the enactments contained in the applied section and chapters, so far as the latter do not contravene the full and natural meaning of the provisos; and that this is the sound rule of construction, although the result of carrying it out may be, and in the present case is, that some of the applied sections are rendered nugatory.* (The italics are ours).

This also appears to me to be the only safe rule in dealing with an Act like the one now before us. To construe such an Act by the canon laid down in the case cited would be to introduce changes into the Hindu Law by a side wind as it were, and also when there is no clear expression on the part of the Legislature of an intention to alter that Law. 8 C. at pp. 640 to 642. N

(7) Act not in force in Central Provinces.

- (a) The only Act of the Legislature, which provides for the grant of probate in respect of the Hindu Wills in the Central Provinces is the Probate and Administration Act, 1881. 2 N.L.R. 123. O
- (b) In the Central Provinces, a person claiming under the will of a Hindu need not take out probate before instituting his claim; S. 187 of the Succession Act is applicable only where the Hindu Wills Act is in force. 2. N.L.R. 123. P

(8) Application for probate—Evidence—Burden of proof.

In all cases in which an application is made under the Hindu Wills Act for probate or letters of administration, it lies upon the applicant to produce all the evidence which the circumstances of the case indicate as proper and necessary to prove the execution of the will in respect of which the Court is asked to make a grant of administration. 10 C.L.R. 550 (552). Q

1.—“Sections 46, 48....shall....apply.”

(1) Succession Act, S. 50—Attestation of will.

Attestation of testatrix by mark and identification, before the Registration Officer, by the witness, who had seen the testatrix affixing her mark, are sufficient for grant of probate. 1 C. 150, *followed* in 6 C. 17=6 C.L.R. 303. R

(2) Will not governed by Hindu Wills Act—Mode of execution.

Where the testator does not come under the operation of the Hindu Wills Act, the execution of the will does not require the formalities prescribed by S. 50 of the Succession Act; such a will is admitted to probate under the ordinary practice of the Court. The only question to be considered is whether the will is a fabrication or not. 1 Bom. L.R. 470. S

(3) Hindu Law—Will—Revocation—Birth of posthumous son—Succession Act, S. 57.

(a) A Hindu will is not revoked by the birth of a posthumous son to the testator. 17 M.L.J. 269. T

(b) S. 57 of the Succession Act is exhaustive, and read with S. 3 of the Hindu Wills Act, the Statute should be understood to mean that the Hindu wills should not be revoked except in the manner mentioned in S. 57 of the Succession Act subject to the proviso contained in S. 3 of the Hindu Wills Act. 17 M.L.J. 269.

N.B.—This case reversed the one reported in 16 M.L.J. 491 where it was held per *Subramanya Aiyar, J. (Moore, J., dissentiente)*, that the birth of a son to a Hindu after the making of a will disposing of all his self-acquired properties, has the effect of revoking the will, if its effect is to leave the son unprovided for thereby, provided the omission to provide for the son is not intentional. U

(4) Devise by Hindu husband—Construction—Succession Act, S. 82.

In the absence of anything to the contrary, a devise by the husband to a Hindu widow is of an absolute alienable interest in the property where the will is governed by the Hindu Wills Act, and S. 82, Succession Act, therefore applies. 5 C.W.N. 300. V

(5) Hindu Law—Will, construction of S. 82 of the Succession Act.

A Hindu husband is never incompetent to create in favour of his wife an absolute interest in immoveable property bequeathed by him to her, though it is necessary, in order to create such interest, to use express language to that effect. The application of S. 82, Act X of 1865, to such a case is not barred by S. 3 of the Hindu Wills Act. 24 C. 646=1 C.W.N. 578, *followed* in 5 Bom. L. R. 334 and 33 C. 947=10 C. W. N. 695=3 C.L.J. 502. (24 W.R.395; 5 C. 684; 8 C. 378 and 8 C. 637, D.). W

(6) Hindu Law—Will, construction of—Succession Act, S. 111.

(a) Where a testator bequeathed his property to his three sons, and in the event of any one dying sonless, to the survivors in equal shares, the time of distribution is the date of the testator's death. 23 C. 563=23 I.A. 18 (P.C.), *approved* of in 33 C. 1306=11 C.W.N. 12=4 C.L.J. 357. X

(b) In such a case, under S. 111, Succession Act, applicable under the Hindu Wills Act, 1870, the original gift to the three sons in equal shares became indefeasible on testator's death. (*Ibid.*) Y

1.—“Sections 46, 48....shall....apply”—(Continued).

- (c) Having regard to the provisions of S. 111, Succession Act, made applicable to Hindus by the Hindu Wills Act, and 23 C. 563 (P.C.), a further provision in the will that in case of any of the testator's daughters or of his brother's daughters dying issueless, her share “shall devolve in equal shares on the surviving daughters”, applied only to the case of a daughter dying during the testator's life-time. Such provision of survivorship would not take effect, if the daughter died several years after the testator's death. 24 C. 406. Z
- (7) Will, construction of—Succession Act, Ss. 101, 102.
- (a) A power to distribute property conferred by a testator under his will, which is exercisable “when my grandsons may attain their age” is void under Ss. 101 and 102 of the Indian Succession Act, as extending the period beyond the limit allowed by S. 101, whether the point of time referred to is taken to be the attaining of age by the grandsons in existence at the date of the testator's death, or such attaining of age by all his grandsons. 31 M. 517=4 M.L.T. 306. A
- (b) If the intention of the testator to benefit *all* his grandsons is clear from the will, the latter view ought to be adopted and a secondary intention to benefit such grandsons at least as should be in existence at *his* death ought not to be assumed. 31 M. 517=4 M.L.T. 306. B
- (c) The rule applicable to such cases in India is that, “if the exercise of a power is made contingent on the happening of an event which, may, by possibility, happen beyond the limits of the rule, the mere fact that the contingency has happened earlier and has rendered the exercise of the power practicable within the prescribed limit does not validate the power.” 31 M. 517=4 M.L.T. 306. C
- (d) S. 3, para 4 of the Hindu Wills Act, has not the effect of making S. 101 of the Succession Act inapplicable to Hindu Wills when S. 2 makes it applicable in terms. S. 3 may have the effect of invalidating a deposition which may be invalid under S. 101. 31 M. 517=4 M.L.T. 306. D
- (8) Effect of the Act—Succession Act, Ss. 180, 242.
- The effect of the Hindu Wills Act, which makes (among others) Ss. 180 and 242 of the Succession Act applicable to Hindus, is to make the probate of the will evidence of the will against all the persons interested under the will. 8 B.L.R. 208. E
- (9) S. 187, Succession Act, Wills of Hindus executed prior to the first September 1870, Probate or Administration to.

An application may be made, and probate or letters of administration granted in respect of wills executed before the first day of September 1870. But S. 187 of the Succession Act, which, by S. 2 of the Hindu Wills Act, was made applicable to wills subsequent to the 1st September, 1870, has not been incorporated in the Probate Act and it follows from this that although it is fully competent to a Court to grant probate or letters of administration in respect of wills antecedent to the 1st September, 1870, still it is not obligatory upon executors or persons claiming letters of administration to obtain such probate or letters of administration, before they can establish their right in respect to any property of the deceased in a Court of justice. 17 C. 272, followed in 18 A. 260=A.W.N. (1896), 44; 2 O.C. 33 and 2 N.L.R. 123. F

1.—“Sections 46, 48....shall....apply”—(Continued).

(10) No necessity to obtain probate of Hindu wills, except in cases where this Act applies—Succession Act, S. 187.

- (a) Save where the Hindu Wills Act, 1870, is in force, it is not obligatory on a person claiming under the will of a Hindu to obtain probate of the will before instituting his claim. 18 A. 260=A.W.N. (1896), 44. **G**
- (b) S. 187, Succession Act, not being applicable to wills made before 1870, executors or legatees under them need not take out probate or letters of administration to establish their rights in a Court of justice. 14 C. 37. (But see 6 C.L.R. 138). **H**
- (c) From the fact that the Probate and Administration Act, (1881) contains no provision similar to those contained in S. 187 of the Indian Succession Act, which are to the effect that a right as executor or legatee under a will cannot be established in any Court without obtaining probate of the will, it must be presumed that, save where the Hindu Wills Act, 1870, extending the said S. 187 to Hindus, is in force, it is not obligatory on a person claiming under the will of a Hindu to obtain probate of the will before instituting his claim. 18 A. 260=16 A.W.N. 44, followed in 2 N.L.R. 123. **I**
- (d) A Hindu defendant in a pending civil suit died leaving a will, which, however, was not proved. His step-brothers were added as representatives, and a decree by consent was passed. The mother of the deceased then got a decree that she was entitled to the estate of her son as against the step-brothers, and subsequently sued to set aside the original decree on the ground that the will, not having been proved, ought to be ignored, since S. 2 of Act XXI of 1870 makes the provisions of S. 187 of the Succession Act applicable to Hindu wills in Madras. Held, though the executors can establish no right without taking out probate, the will cannot be ignored for all purposes whatever, and since the existence of the will was proved and the mother was not entitled under it, she could not now sue to set aside the original decree. 14 M. 454. **J**
- (e) Except in the Provinces where the Hindu Wills Act, 1870, is in force, a person claiming under the will of a Hindu is not bound to obtain probate of the will before instituting his suit claiming thereunder. 2 O.C. 33. **K**
- (f) Previously to the passing of the Probate Act (V of 1881) executors appointed by such wills as fell within the Hindu Wills Act (XXI of 1870) acquired the same estate and interest in the property of their deceased testator with the same restrictions in representing the estate in a Court of Justice as obtained under English Law. 8 B. 241. **L**
- (g) All the sections of the Indian Succession Act (X of 1865) relating to grants of probate and letters of administration which were formerly incorporated in the Hindu Wills Act (XXI of 1870) are now (with the exception of S. 187 removed from that Act by S. 154 of Act V of 1881, but are, with the exception of S. 187, re-enacted verbatim in Act V of 1881. S. 187, however, still remains incorporated by reference with the Hindu Wills Act (see section 154 of Act V of 1881). The result is, that probate is necessary in case of such Hindu Wills as fall within the Hindu Wills Act. 8 B. 241. **M**

1.—“Sections 46, 48....shall....apply”—(Continued).

(h) But the omission from Act V of 1881 (which applies to all Mahomedans and Hindus) of any section corresponding to S. 187 of the Indian Succession Act, and the retention of that section in the Hindu Wills Act shows that it was the intention of the Legislature that, except in cases falling under the Hindu Wills Act, an executor of any Hindu or Mahomedan will may establish his right in a Court of Justice without taking out probate. 8 B. 241. N

(11) Powers of executor under Hindu will to which Hindu Wills Act does not apply.

(a) The powers of an executor, under a will of a Hindu, to whom the Hindu Wills Act does not apply, are analogous to those of a manager of a joint Hindu family. A Hindu widow, holding the power of execution under a certificate of administration granted to her by the District Court, has only the powers of a Hindu widow or the manager of a joint Hindu family; and she cannot sell the property unless there is justifiable or pressing necessity according to Hindu Law. 9 Bom.L.R. 404 (408) (21 C. 732, R.). O

(b) Independently of the provisions of the Succession Act (X of 1865) as applied by the Hindu Wills Act (XXI of 1870), where there is no gift of the estate to the executors of a Hindu, they do not, in the character merely of executors, take any estate, properly so called, in the property of the deceased. 1 B. 269. P

(c) Therefore, the mere nomination of the executors, though followed by probate, does not, of itself, confer any estate on the executor further than the estate he may have by the express words of the will, or as heir of the testator. 1 B. 269. Q

(12) Administrator-General's Act (XXIV of 1867), S. 30—S. 31, Act II of 1874—Position of Hindu executor—Right of transfer.

S. 31, Act II of 1874, is a re-enactment, without verbal alteration, of S. 30, Act XXIV of 1867. At the time when the prior Act was passed, the executor of a Hindu testator was not a person entitled to transfer under the Act. But by the time the later Act was passed, he became a person entitled so to act, by virtue of the provisions of the Hindu Wills Act, 1870. So, a Hindu executor after the passing of the later Act, may effect a valid transfer of the estate, under S. 31 of the Act. 22 C. 788 (P.C.) = 22 I.A. 107. R

LAW BEFORE PASSING OF THE ACT.

(1) Right of Hindu to make testamentary disposition before Hindu Wills Act.

Before the Hindu Wills Act, a Hindu had power to make a testamentary disposition of whatever was his absolute property. See 2 M.I.A. 54; 6 M.I.A. 309; 12 M.I.A. 1; 3 B.H.C.R. 6. S

(2) No formalities required for Hindu Wills before this Act.

No particular formalities were necessary in the execution or attestation of Hindu Wills before that Act. 7 B.H.C.R. 224; 2 M.H.C.R. 37. T

(3) Nuncupative wills were valid among Hindus before the Act.

(a) A Hindu might make a nuncupative will of any property, moveable or immoveable, before that Act. 2 M.H.C. 37. U

1.—“Sections 46, 48....shall....apply”—(Concluded).

(b) A bequest is not void under the Hindu Law because it is nuncupative, and accordingly such a bequest made beyond the limits of the territory to which the Hindu Wills Act applies, and not relating to any immoveable property situated within them, was held to be a valid one. 1 B. 641 (2 M.H.C. 37; 3 W.R. 138; 8 W.R. 455; 6 B.H.C. 224; A. C.J., R.). Y

(4) No attestation was requisite.

In Bombay, prior to 1st September, 1870, a will by a Hindu was held not to be invalid for want of attestation. 1 B.H.C. 77; 3 B. 7. W

(5) Parol revocation was allowed.

The will of a Hindu might be revoked by parol prior to this Act; 1 C.L.R. 113 = 3 C. 626 = 1 I.A. 228. X

(6) Definite authority to destroy also constituted revocation.

And if definitive authority was given to the person with whom the will was deposited to destroy it, that constituted revocation, though the will itself was not destroyed. (*Ibid.*) Y

(7) Extent of Hindu's power of testamentary disposition.

The extent of the power of disposition of a Hindu testator is to be regulated by the Hindu Law. 8 M.I.A. 66. Z

(8) Hindus cannot interfere with course of succession by means of will.

(a) A Hindu cannot be allowed to institute by means of his will a course of succession not known to Hindu Law. 9 B.L.R. 377; 16 C. 383. A

(b) Where a Hindu confers successive estates of inheritance by his will, such estates must be such as are known to Hindu Law. 9 B.L.R. 377. B

(c) For instance, it is not competent to a Hindu to create an estate analogous to the estate-tail known to English Law. (*Ibid.*) C

(d) An estate of inheritance created by a Hindu will, would be void if inconsistent with the general law of inheritance. 6 M.I.A. 52. D

(9) Hindu cannot interfere by means of his will with the right of maintenance vested in other persons.

(a) So also a Hindu could not, by his will, interfere with his wife's right to maintenance. 8 M.I.A. 66. E

(b) As to testamentary power interfering with the son's right to maintenance, see 9 B.L.R. 377. F

(10) Hindu's right to will away self-acquired property, etc.

As to a Hindu's power to dispose of by will his self-acquired property or property acquired by partition, etc.; see 3 B.H.C. (A.C.) 66; 11 B.H.C. 76; 12 M.I.A. 1 (P.C.). G

3. Provided that marriage shall not revoke
Provisos. any such will or codicil:

And that nothing herein contained shall authorise a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section 2 of this Act, he could not deprive them by will 1: * *

And that nothing herein contained shall affect any law of adoption or intestate succession ² ;

And that nothing herein contained shall authorise any Hindu, Jaina, Sikh or Buddhist to create in property any interest ³ which he could not have created before the first day of September 1870.

(Notes).

N.B.—See, also, notes under S. 2, *supra*.

General.

N.B.—The section as originally framed contained a further proviso as follows :
—“ And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos*.” But this proviso has now been repealed by S. 154 of Act V of 1881 (Probate and Administration Act). H

Power of Bengal Mofussil Courts to grant probates of Hindu wills made prior to 1870.

- (a) The powers conferred by this Act on Mufussil Courts in Bengal being only in respect of wills made on or after the first day of September, 1870, it was held that the Bengal Mofussil Courts had no power under this Act to grant probates of wills of Hindus made prior to that date. 6 C.L.R. 138. But see, also, 14 C. 37; 17 C. 372. I
- (b) Since the passing of the Probate and Administration Act, such Courts have jurisdiction to grant applications for probate in respect of the wills of Hindus made before the 1st September, 1870. *Krishna Kinker Roy v. Rai Mohun Roy*, 14 C. 37; *Krishna Kinker Roy v. Panchuram Mundle*, 17 C. 372. J

1.—“ Proviso 2.”

(1) Basis of the proviso.

This proviso is based on the decision of the Privy Council in 8 M.I.A. 66, where it was held that the extent of the power of testamentary succession of a Hindu is regulated by the principles of Hindu Law. K

(2) Scope of proviso.

Explanation 1 to S. 46, Indian Succession Act, 1865, read with second proviso to S. 3, Hindu Wills Act, does not enable a Hindu widow to dispose by will of any property which she cannot alienate *inter vivos*. 6 N.L.R. 46. L

2.—“ Nothing herein contained shall affect any law of adoption or intestate succession.”

(1) Will not to be used to institute a new line of succession.

- (a) A Hindu by his will cannot institute a course of succession unknown to the Hindu Law. 9 B.L.R. 377. See, also, 16 C. 383. M
- (b) All estates of inheritance created by gift or will are void in so far as they are inconsistent with the general law of inheritance. 6 M.I.A. 52. N
- (c) A Hindu might by will create an estate for life. 9 B.L.R. 377. O

2.—“Nothing herein contained shall affect any law of adoption or intestate succession”—(Concluded).

(2) Hindu will—Gift to unborn persons.

(a) A gift by a Hindu will to persons, not in existence at the testator's death, is void both before and after the Hindu Wills Act. 8 C. 637=10 C. L.R. 459. (*Overruling*, 8 C. 157=9 C.L.R. 121); see, also, 9 B.L.R. 377 (P.C.). P

(b) The law as laid down in the Tagore case is not affected by the Hindu Wills Act. 9 B. 491. Q

3.—“To create an interest.”

“To create an interest”—Construction.

The words “to create an interest” in proviso 5 to S. 3 of the Hindu Wills Act apply both to the quantity and quality of the interest created and, in their natural and ordinary meaning include the capacity of a donee to take. 8 C. 637=10 C.L.R. 459. R

4. On and from that day, section 2 of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Partial repeal of Bengal Regulation, V of 1792, section 2.

Saving of rights of Administrator-General.

5. Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators-General of Bengal, Madras and Bombay, respectively.

(Notes).

See Notes under the Administrator-General's Act, II of 1874, *infra*. R 1

Right of Hindu executor to transfer estate to Administrator-General.

An executor appointed by a Hindu testator who died after the passing of the Hindu Wills Act can, after obtaining probate, transfer the estate, effects and interests vested in him to the Administrator-General under S. 31, Administrator-General's Act, II of 1874. 5 M.L.J. 57=22 I. A. 732. S

6. In this Act and in the said section * * * * of the Indian Succession Act, all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively:

Interpretation clause.

And in applying Ss. 62, 63, 92, 96, 98, 99, 100, 101, 102, [and 103] of the said Succession Act to wills and codicils made under this Act, the words, “son,” “sons,” “child” and “children” shall be deemed to include an adopted child; and the word “grandchildren” shall be deemed to include the children, whether

adopted or natural born, if a child whether adopted or natural born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.

(Notes).

N.B.—This section is printed as altered by S. 154 of Act V of 1881 (Probate and Administration). T

(1) Under Hindu Law, donee must be in existence.

(a) In order to make a gift under a will good by Hindu Law, the donee, except in the case of an adopted child or a child *ex ventre sa mere*, must be a person in existence capable of taking at the time when the gift takes effect. 9 B.L.R. 377 (P.C.). U

(b) A child adopted after a man's death, in pursuance of a power given by him, is, in contemplation of law, begotten by that man. (*Ibid.*) Y

(2) Evidence Act, S. 41—Probate granted before Hindu Wills Act.

S. 41, Evidence Act, applies to probates granted before the Hindu Wills Act. 14 C. 861. W

(3) Cutchi Memons are not "Hindus" under the Act.

Cutchi Memons are not Hindus within the meaning of S. 2 of the Hindu Wills Act (XXI of 1870), and, therefore, probate to take effect throughout India cannot be granted in the case of a Cutchi Memon testator.

Cutchi Memons are Mahomedans to whom Mahomedan Law is to be applied, except when an ancient and invariable special custom to the contrary is established. 6 B. 452 (460). X

(4) Minor not competent to make a will.

Where a guardian was appointed, but he dies, and no fresh guardian was appointed, the ward cannot make a valid will before he attains the age of 21 years. 6 Ind. Cas. 6. Y

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THE
PROPERTY IN LAND ACT, 1837

(ACT IV OF 1837)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY
T. A. VENKASAWMY ROW,
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THE PROPERTY IN LAND ACT, 1837.

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THE PROPERTY IN LAND ACT¹.

(ACT IV OF 1837).

[Passed on the 17th April, 1837].

1. * * * * * 2 It shall be lawful for
All subjects of any subject of His Majesty to acquire and hold in
Crown empowered to perpetuity, or for any term of years, property in land,
hold land. or in any emoluments issuing out of land, in any part
of the territories of the East India Company³.

(Notes).

1.—“Property in Land Act.”

N.B.—This Act appears to have been passed pursuant to the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), S. 86, Coll. Stats. Ind. Vol. I.

Act where declared in force.

- (a) This Act has been declared by the Laws Local Extent Act, 1874 (XV of 1874), S. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.
- (b) It has also been declared to be in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), S. 3 and Schedule, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), S. 3.
- (c) It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh.	...	See Gazette of India, 1880, Pt. I. p. 672.		
West Jalpaiguri.	...	Do.	1881	Do. 74.
The District of Hazribagh.	...	Do.	1881	Do. 507.
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The District of Manbhum.	...	Do.	1881	Do. 509.
Pargana Dhalbhum in the District of Singhbhum	...	Do.	1881	Do. 510.
The Scheduled portion of the Mirzapur District	...	Do.	1879	Do. 333.
Jaunsar Bawar	...	Do.	1879	Do. 382.

The Districts Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan, (portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar

1.—“*Property in Land Act*”—(Concluded).

and Kohat now form the North-West Frontier Province, See Gazette of India, 1901, Pt. I. p. 557, and *ibid.* 1902, Pt. I. p. 575, but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal)

Regulation (II of 1900, S. 3)	...	See Gazette of India, 1886 Pt. I. p. 48.
The District of Lahaul	...	Do. 1886 Do. 301.
The District of Sylhet	...	Do. 1879 Do. 631.
The Scheduled Districts in Ganjam and Vizagapatam, See Fort St. George Gazette, 1898, Pt. I. 666, and Gazette of India, 1898, Pt. I. p. 869. A		
(d) It has been extended, by notification under S. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal. See Gazette of India, 1876, Pt. I, p. 605. B		

2.—“*It shall be lawful etc.*”

N.B.—The words “It is hereby enacted that after the 1st day of May next” at the commencement of S. 1 were repealed by the Repealing Act, (XVI of 1874).

3.—“*Territories of the East India Company.*”

N.B.—For the old law, see the Bengal Land Revenue Regulation, 1793 (II of 1793), Ss. 17 and 46, repealed by the Repealing Act, 1868 (VIII of 1868), S. 1, and the Repealing Act, 1874 (XVI of 1874), S. 1, respectively. C

2. * * * * * All rules which prescribe the manner in which such property as is aforesaid may now be acquired and held by Natives of the said territories¹ shall extend to all persons who shall, under the authority of this Act, acquire or hold such property².

(Notes).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 2 were repealed by the Repealing Act, (XVI of 1874).

1.—“*Natives of the said territories.*”

N.B.—For definitions of the term “Natives of India,” See the Government of India Act, 1870 (33 Vict., C. 3), S. 6. Coll. Stats. Ind. Vols. I and II, respectively, and the Army Act (44 & 45 Vict. C. 58), S. 190 (22).

2.—“*Acquire or hold such property.*”

N.B.—See also the Land-holders Public Charges and Duties Act, 1853, (II of 1853).

THE WILLS ACT, 1838

(ACT XXV OF 1838)

(WITH THE CASE-LAW THEREON)

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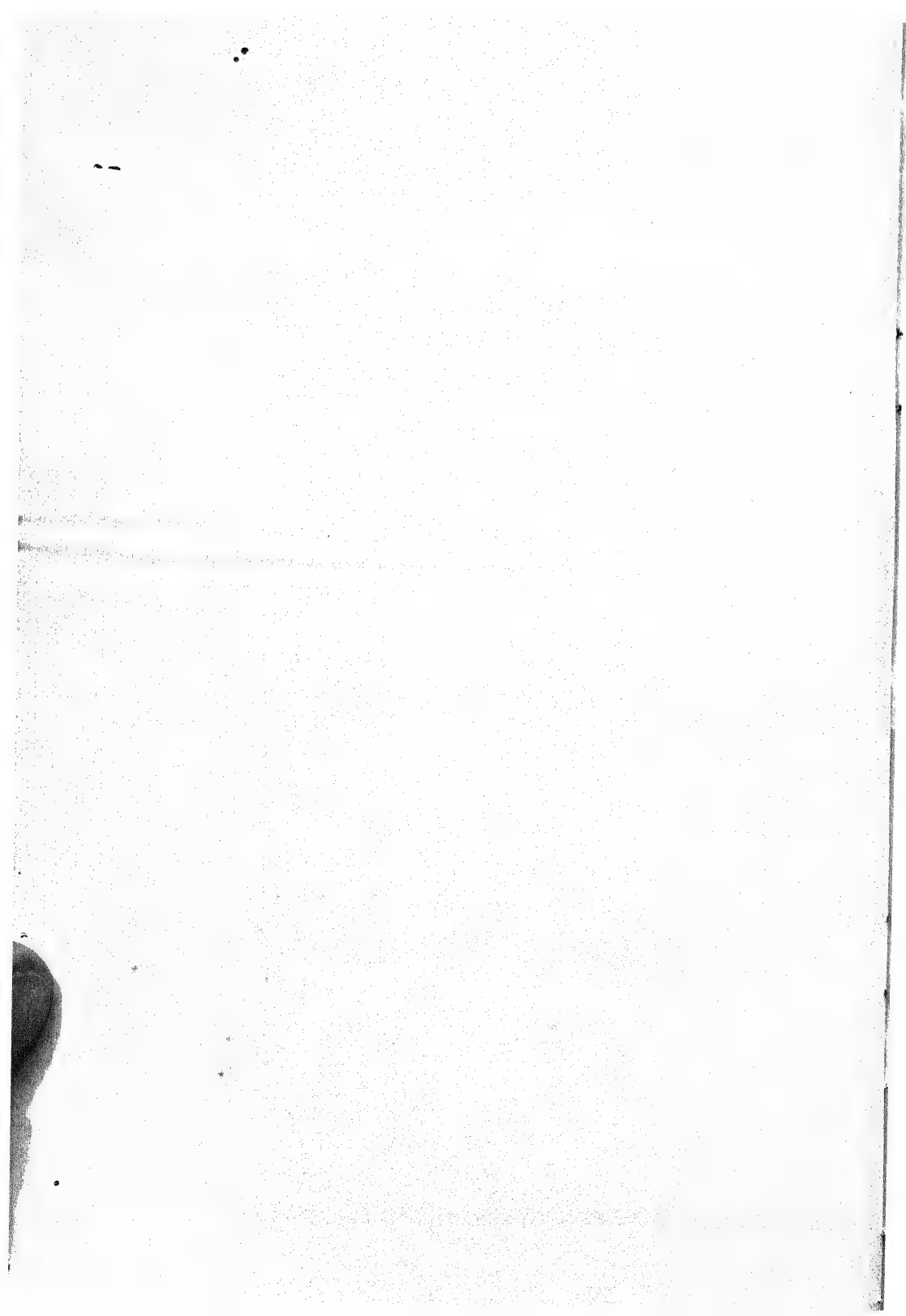
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THE WILLS ACT.

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THE WILLS ACT, 1838¹.

(ACT XXV OF 1838).

[Passed on the 8th October, 1838].

1. It is hereby enacted that the words and expressions hereinafter mentioned shall in this Act, except where the nature of the provision or the context of the Act shall exclude, such construction, be interpreted as follows; (that is to say,)

Interpretation. the word "will" shall extend to a testament, and to a codicil, and "Will." to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament of devise of the custody and tuition of any child by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled. "An Act for taking away the Court of Wards and liveries, and tenures *in capite* and by Knight's service and purveyance, and for settling a revenue upon His Majesty in lieu thereof," or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and liveries, and tenures *in capite* and by Knight's service," and to any other testamentary disposition; and the words "real estate" shall extend to messuages, lands, rents and

"Real estate." hereditaments, whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and

"Personal estate." other chattels real, and also to moneys, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and

every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and

every word importing the masculine gender only shall extend and be applied to a female as well as a male.

(Notes).

1.—"The Wills Act, 1838."

N.B. 1.—This Act is based on the Wills Act, 1837 (7 Will. 4 & 1 Vic. C. 26).

N.B. 2.—The whole Act, except as to wills made before the 1st January, 1866, was repealed by the Repealing Act, 1868, (VIII of 1868).

1.—“The Wills Act 1838”—(Concluded).

N.B. 3.—As to wills made before the 1st January, 1866, the Act has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), S. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

Act, where declared in force.

(a) It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts namely :— A

West Jalpaiguri.	...	See Gazette of India, 1881, Pt. I. p. 74.		
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, See Calcutta Gazette, 1899, Pt. I. p. 44) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	...	Do.	1881	Do. 504.
The Scheduled portion of the Mirzapur District.	...	Do.	1879	Do. 883.
Jaunsar Bawar.	...	Do.	1879	Do. 882.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan (portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar, and Kohat now form the North-West Frontier Province, See Gazette of India, 1901, Pt. I. p. 857, and <i>ibid</i> , 1902, Pt. I. p. 575, but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation, (II of 1900 S. 3).	...	Do.	1886	Do. 48.
The District of Lohaul.	...	Do.	1886	Do. 301.
The District of Sylhet.	...	Do.	1879	Do. 631.
The rest of Assam (except the North Lushai Hills).	...	Do.	1897,	Do. 299.

(b) The Scheduled Districts in Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I. p. 666, and Gazette of India, 1898, Pt. I. p. 869. B

(c) It has been extended, by notification to the Scheduled Districts of Kumaon and Garhwal. See Gazette of India, 1876, Pt. I. p. 606. C

2. * * * * * An Act passed in the thirty-second year of the reign of King Henry the Eighth intituled ¹ “The Act of Wills, Wards and primer seisins; whereby a man may devise two parts of his land,” and also

an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled “The Bill concerning the explanation of Wills,” ¹ and also

an Act passed in the Parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, etc., may be disposed by will or otherwise, and concerning wards and primer seisins," and also

so much of an Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for prevention of Frauds and Perjuries," and of an Act passed in the Parliament of Ireland in the seventh year of the reign of King William the third, intituled "An Act for prevention of Frauds and Perjuries as relates to devises or bequests of lands, tenements, or to the revocation or alteration of any devise in writing of any lands, tenements or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise or bequest therein," and also so much of an act passed in the fourth and fifth years of the reign of Queen Anne, intituled "An Act for the amendment of the Law and the better advancement of Justice," and of an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the amendment of the Law and the better advancement of Justice" as relates to witnesses to nuncupative wills, and

so far as the following Acts may be construed to have any operation within the territories of the East India Company,

so much of an Act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to amend the law concerning common recoveries, and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled 'An Act for prevention of frauds and perjuries,' " as relates to estates *pur autre vie*; and also

an Act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates in that part of Great Britain called England and in His Majesty's colonies and plantations in America," * * * * 2 and also

an Act passed in the Parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates,"

shall from the passing of this Act cease to have effect in the territories of the East India Company, except so far as the same Acts or any of them respectively relate to any wills or estates *pur autre vie* to which this Act does not extend.

(Notes).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 2 were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

1.—“*An Act Passed etc.*” “*The Bill concerning etc.*”

N.B.—The above were repealed by 7 Will. 4 and 1 Vict. C. 26, S. 2, except as to wills made before 1838.

2.—“*Plantations in America.*”

N.B.—The words “except so far as relates to His Majesty’s colonies and plantations in America,” at the end of this clause were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

3. * * * This Act shall only extend to the wills of persons whose personal property cannot by the law of England pass to their representatives without probate or letters of administration obtained in one of Her Majesty’s Supreme Courts of Judicature, and * the Statutes and parts of Statutes aforesaid are only repealed as far as they relate to the succession to the property of such persons.

Wills to which Act applies.

Limitation of repeal.

(Notes).

N.B. 1.—The words “And it is hereby enacted that” at the commencement of S. 3 were repealed by the Repealing and Amending Act, (XII of 1891).

N.B. 2.—The word “that” before the words “the statutes” was repealed by the Repealing and Amending Act, (XII of 1891).

General.

Application of Act—East Indians domiciled out of the jurisdiction of High Court.

(a) The Wills Act, XXV of 1838, applied to the wills of East Indians, whether domiciled within or beyond the testamentary jurisdiction of the High Court. 2 Hyde, 3. D

(b) *Held*, on appeal, the Wills Act only applied where the High Court had an exclusive jurisdiction analogous to that of the Ecclesiastical Court in England. It did not apply in the case of a person who was not entitled by birth or domicile to have applied to him the actual law of England. Therefore it did not apply to the case of an East Indian testatrix (the illegitimate daughter of a Mahomedan woman) who resided and died outside the limits of the ordinary civil jurisdiction of the Court. Bourke, A.O.C., 111=Cor., 97. E

4. * * * It shall be lawful for every person to devise, bequeath or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir-at-law of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator,

Property disposable by will.

and * the power hereby given shall extend to all estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be a corporeal or an incorporeal hereditament, and whether the same shall be freehold or of any other tenure, and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights to entry for conditions broken, and other rights of entry, and also to such of the same estates, interests and rights respectively and other real and personal estate as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

(Notes).

N.B. 1.—The words “And it is hereby enacted that” at the commencement of S. 4 were repealed by the Repealing and Amending Act (XII of 1891).

N.B. 2.—The word “that” in para 2 of S. 4 was repealed by the Repealing and Amending Act (XII of 1891).

Infant's will in- 5. * * * * No will made by any person
valid. under the age of twenty-one years shall be valid.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 5 were repealed by the Repealing and Amending Act (XII of 1891).

Married woman's 6. * * * * No will made by
will. any married woman shall be valid, except such a will
as might have been made by a married woman before
the passing of this Act.

(Note).

N.B.—The words “Provided also, and it is hereby enacted” at the commencement of S. 6 were repealed by the Repealing and Amending Act (XII of 1891).

7. * * * * No will shall be valid unless it shall be in writing
and executed in manner hereinafter mentioned (that
Mode of execution. is to say); it shall be signed at the foot or end thereof
by the testator or by some other person in his presence and by his
direction, and such signature shall be made or acknowledged by the
testator in the presence of two or more witnesses present at the same
time ¹ and such witnesses shall subscribe the will in the presence of the
testator, but no form of attestation shall be necessary.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 7 were repealed by the Repealing and Amending (XII of 1891).

General.

Corresponding section of the English Wills Act.

This section is a copy of the 9th Section of the English Wills Act, 1 Vic. Chap. 26, with the omission of the words, "shall attest." See 3 M.I.A. at p. 399, 400, note. F

1.—"*In the presence of two or more witnesses present at the same time.*"

Necessity of the joint presence and joint subscription of witnesses.

A testator signed his will in the presence of a witness, who subscribed it in his presence; and, some time afterwards, upon the arrival of another witness, the testator, in the joint presence of the former witness, and the other subscribing witness, acknowledged his subscription at the foot of the will. The second witness then subscribed the will, and the first witness, in his and the testator's presence, acknowledged his subscription but did not re-subscribe.

Held, by the judicial Committee, (affirming the sentence of the Supreme Court at Calcutta), that the requirements of the Act had not been sufficiently complied with; it being necessary that both witnesses should be jointly present at the same act of the testator, and jointly subscribe it in his presence. 3 M.I.A. 395. G

8. * * * * * No appointment made by will in exercise

Execution of ap-
pointment by will.

of any power shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

(Note).

N.B.—The words "And it is hereby enacted that" at the commencement of S. 8 were repealed by the Repealing and Amending Act (XII of 1891).

9. * * * * * Every will executed in manner
Publication un-
necessary. hereinbefore required shall be valid without any other publication thereof.

(Note).

N.B.—The words "And it is hereby enacted that" at the commencement of S. 9 were repealed by the Repealing and Amending Act (XII of 1891).

10. * * * * * If any person who shall attest the
Incompetency of
attesting witness to
prove will not to
invalidate it. execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

(Note).

N.B.—The words "And it is hereby enacted that" at the commencement of S. 10 were repealed by the Repealing and Amending Act (XII of 1891).

11. * * * * If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person, attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

Devise to attesting witness, or to his or her wife or husband void but witness may prove will.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 11 were repealed by the Repealing and Amending Act (XII of 1891).

12. * * * * In case by any will, any real or personal estate shall be charged with any debt, or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Attesting witness with whose debt estate is charged by will, admissible to prove it.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 12 were repealed by the Repealing and Amending Act (XII of 1891).

13. * * * * No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Executor not incompetent to prove will.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 13 were repealed by the Repealing and Amendment Act (XII of 1891).

14. * * * * Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin under the Statute of Distribution).

Revocation of will by testator's marriage.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 14 were repealed by the Repealing and Amending Act (XII of 1891).

Will not be re-
voked by presump-
tion of intention.

15. * * * * No will shall be revoked by any presumption of intention on the ground of an alteration in circumstances.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 15 were repealed by the Repealing and Amending Act (XII of 1891).

16. * * * * No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Will or codicil
how revocable.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 16 were repealed by the Repealing and Amending Act (XII of 1891).

17. * * * * No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or some other part of the will opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Effect of obliteration,
interlineation
or alteration.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 17 were repealed by the Repealing and Amending Act (XII of 1891).

18. * * * * No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in a manner hereinbefore required and showing an intention to revive the same, and, when any will or codicil which shall

Revival of revoked
will.

be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof, as shall have been revoked by the revocation of the whole thereof, unless an intention to the contrary be shown.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 18 were repealed by the Repealing and Amending Act (XII of 1891).

19. * * * * Every conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised except an act by which such will be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

Effect of acts not amounting to revocation done subsequent to execution.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 19 were repealed by the Repealing and Amending Act (XII of 1891).

20. * * * * Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Will to be construed as if executed immediately before death.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 20 were repealed by the Repealing and Amending Act (XII of 1891).

21. * * * * Unless a contrary intention shall appear by the will, such real estate and interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

Property comprised in devise which cannot take effect to be included in residuary devise.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 21 were repealed by the Repealing and Amending Act (XII of 1891).

22. * * * * A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which

General devise an execution of power of appointment.

he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator or any bequest of personal estate, described in a general manner shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 22 were repealed by the Repealing and Amending Act (XII of 1891).

23. * * * * Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest with the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

Devise without words of limitation.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 23 were repealed by the Repealing and Amending Act (XII of 1891).

24. * * * * In any devise or bequest of real or personal estate the words “die without issue,” or “die without leaving issue,” or any other words which may import either a want or failure of issue of any person in his life-time or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the life-time or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Construction of words importing want or failure of issue.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 24 were repealed by the Repealing and Amending Act (XII of 1891).

25. * * * Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of free-hold, shall thereby be given to him expressly or by implication.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 25 were repealed by the Repealing and Amending Act, (XII of 1891).

26. * * * Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole real estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 26 were repealed by the Repealing and Amending Act (XII of 1891).

27. * * * Where any person to whom any real estate shall be devised for an estate tail, or an estate in quasi-entail, shall die in the life-time of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 27 were repealed by the Repealing and Amending Act (XII of 1891).

28. * * * Where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the life-time of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of

such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 28 were repealed by the Repealing and Amending Act (XII of 1891).

29. * * * * Notwithstanding anything in this Act contained, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.
- Savings of wills of soldiers and seamen.

(Note).

N.B.—The words “and it is hereby enacted that” at the commencement of S. 29 were repealed by the Repealing and Amending Act (XII of 1891).

30. (*Savings of provisions of Act XX of 1837.*) Rep. by the Repealing and Amending Act (XII of 1891).

31. * * * * This Act shall not extend to any will made before the first day of February in the year of our Lord 1839, and every will re-executed or re-published or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, re-published or revived; and this Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of February in the year of our Lord 1839.
- Saving of wills made before 1st Feb. 1839, and of certain estates.

(Note).

N.B.—The words “And it is hereby enacted that” at the commencement of S. 31 were repealed by the Repealing and Amending Act (XII of 1891).

THE WILLS ACT, 1838.

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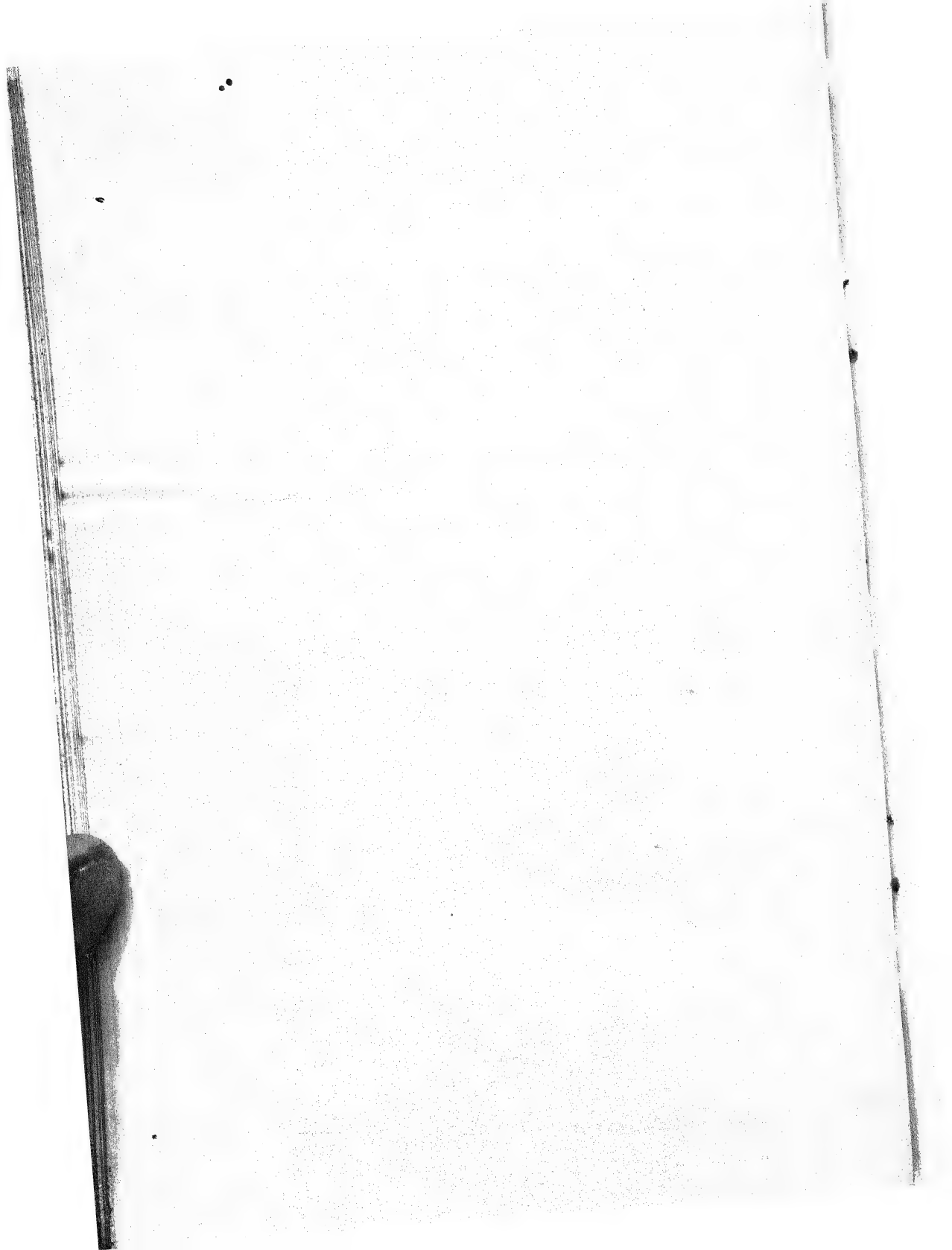
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THE
INHERITANCE ACT, 1839

(ACT XXX OF 1839).

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

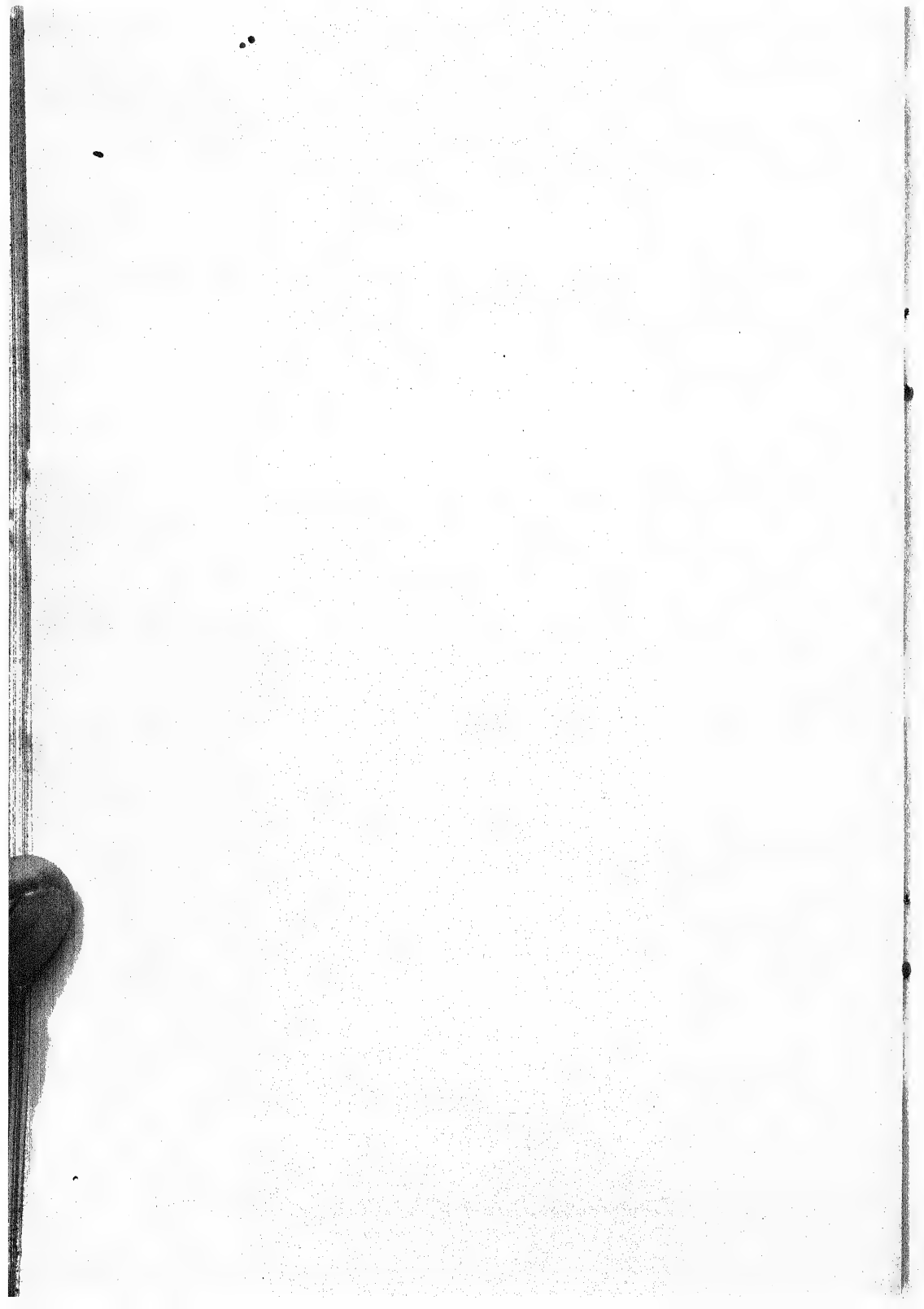
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THE INHERITANCE ACT. 1839.¹

(ACT XXX OF 1839).

(Passed on the 16th December, 1839.)

An Act for the Amendment of the Law of Inheritance.

1. WHEREAS it is expedient to extend the amendments in the English law of inheritance contained in the Statute 3rd and 4th William IV., Chapter CVI., to the territories of the East India Company in cases which, but for the passing of this Act, would be governed by the English law of inheritance as it existed previously to the passing of the aforesaid statute ;

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows (that is to say.)

the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency ;

and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition or enclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent ;

and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue ;

and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor ;

and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof;

"Person last entitled." and the word "assurance" shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity;

"Assurance." and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

"Number and gender."

(Notes).

1.—"The Inheritance Act."

N.B. 1.—The whole Act, except as to intestacies occurring before 1st January, 1866, was repealed by Act (VIII of 1868).

N.B. 2.—As to inheritance, where descent took place before 1st January, 1866, the Act has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), S. 3, to be in force in the whole of British India, except as regards the Scheduled District.

N.B. 3.—S. 29 of the Trustees' and Mortgagees' Powers Act, 1866 (XXVIII of 1866), is to be read as part of Act XXX of 1839. See Act XXVIII of 1866, S. 29. A

Act, where declared in force.

(a) It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri	...	See Gazette of India, 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	...	Do. 1881, Pt. I, p. 504.
The Scheduled portion of the Mirzapur District	...	Do. 1879, Pt. I, p. 383.
Jaunsar Bawar	...	Do. 1879, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan (<i>Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat (now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857), and (ibid), 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (upper Tanawal) Regulation (II of 1900, S. 3)</i>)	...	Do. 1886, Pt. I, p. 48.

I.—“ The Inheritance Act ”—(Concluded).

The District of Sylhet ... See Gazette of India, 1879, Pt. I, p. 631.

The rest of Assam (except the North

Lushai Hills)

...

Do.

1897, Pt. I, p. 299.

The Scheduled Districts in Ganjam and Vizagapatam, see Fort. St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 870. **B**

(b) It has been declared, by notification under S. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul. See Gazette of India, 1886, Pt. I, p. 301. **C**

2. * * * In every case descent shall be traced from the purchaser, and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this Act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

it shall be proved that he inherited the same, and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser unless it shall be proved that he inherited the same.

(Note).

N.B.—The words “ And it is hereby further enacted that ” at the commencement of S. 2 were repealed by the Repealing and Amending Act (XII of 1891).

3. When any land shall have been devised by any testator who shall die after the first day of July one thousand eight hundred and forty, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent; and when any land shall have been limited by any assurance executed after the said

Heir entitled under a will, shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.

first day of July one thousand eight hundred and forty to the person or the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

4. * * * When any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July one thousand eight hundred and forty, or under a limitation to the heir or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall

Where heirs take by purchase under limitations to the heirs of their ancestors, the land shall descend as if the ancestor had been the purchaser.

depart this life after the said first day of July one thousand eight hundred

and forty, then and in any of such cases such land shall descend, and the descent thereof shall be traced, as if the ancestor named in such limitation had been the purchaser of such land.

(Note).

N.B.—The words “And it is hereby further enacted that” at the commencement of S. 4 were repealed by the Repealing and Amending Act (XII of 1891).

5. * * * No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

Brothers, etc., shall trace descent through their parent.

(Note).

N.B.—The words “And it is hereby further enacted that” at the commencement of S. 5 were repealed by the Repealing and Amending Act (XII of 1891).

6. * * * Every lineal ancestor shall be capable of being heir to any of his issue, and, in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

(Note).

N.B.—The words “And it is hereby further enacted that” at the commencement of S. 6 were repealed by the Repealing and Amending Act (XII of 1891).

7 * * * * None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and ⁽¹⁾ no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and ⁽¹⁾ * * no female maternal ancestor of such person, or any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

The male line to be preferred.

(Note).

N.B.—The words “And it is hereby further enacted and declared that” at the commencement of S. 7 were repealed by the Repealing and Amending Act (XII of 1891).

1.—“And.”

The words “and that” and the word “that” were repealed by Act XII of 1891.

8. * * * * Where there shall be a failure of male paternal

The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor.

ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestors, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.

(Note).

N.B.—The words “ And it is hereby further enacted and declared that” at the commencement of S. 8 were repealed by the Repealing and Amending Act (XII of 1891).

9. * * * * Any person related to the person from whom the

Half blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree; if on the part of a female ancestor after her.

descent is to be traced by the half blood shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

(Note).

N.B.—The words “ And it is hereby further enacted and declared that” at the commencement of S. 9 were repealed by the Repealing and Amending Act (XII of 1891).

10. * * * * When the person from whom the descent of any

After the death of a person attained, his descendants may inherit.

land is to be traced shall have had any relation who, having been attained, shall have died before such descent shall have taken place, then such attainer shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attained, unless such land shall have escheated in consequence of such attainer before the first day of July one thousand eight hundred and forty.

(Note).

N.B.—The words “ And it is hereby further enacted and declared that” at the commencement of S. 10 were repealed by the Repealing and Amending Act (XII of 1891).

11. * * * This Act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of July one thousand eight hundred and forty.

Act not to extend to any descent before 1st July, 1840.

(Note).

N.B.—The words “ And it is hereby further enacted that ” at the commencement of S. 11 were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

12. * * * Where any assurance executed before the said first day of July, one thousand eight hundred and forty, or the will of any person who shall die before that time, shall contain any limitation or gift to the heir or heirs of any person under which the person or persons to answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living at the time aforesaid.

Limitations made before the 1st July, 1840, to the heirs of a person then living, shall take effect as if the Act had not been made.

(Note).

N.B.—The words “ And it is hereby further enacted that ” at the commencement of S. 12 were repealed by Repealing and Amending Act (XII of 1891).

13. * * * This Act shall not be construed to affect inheritances of land which are not subject to the English law of inheritance, or to extend or alter the jurisdiction of any of Her Majesty's Court of Justice.

Saving of certain inheritance and jurisdiction.

(Note).

N.B.—The words “ And it is hereby provided that ” at the commencement of this section were repealed by Act (XII of 1891).

THE INHERITANCE ACT, 1839.

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THE
LEGAL REPRESENTATIVES'
SUITS ACT, 1855

(ACT XII OF 1855.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY
T. A. VENKASAWMY ROW,
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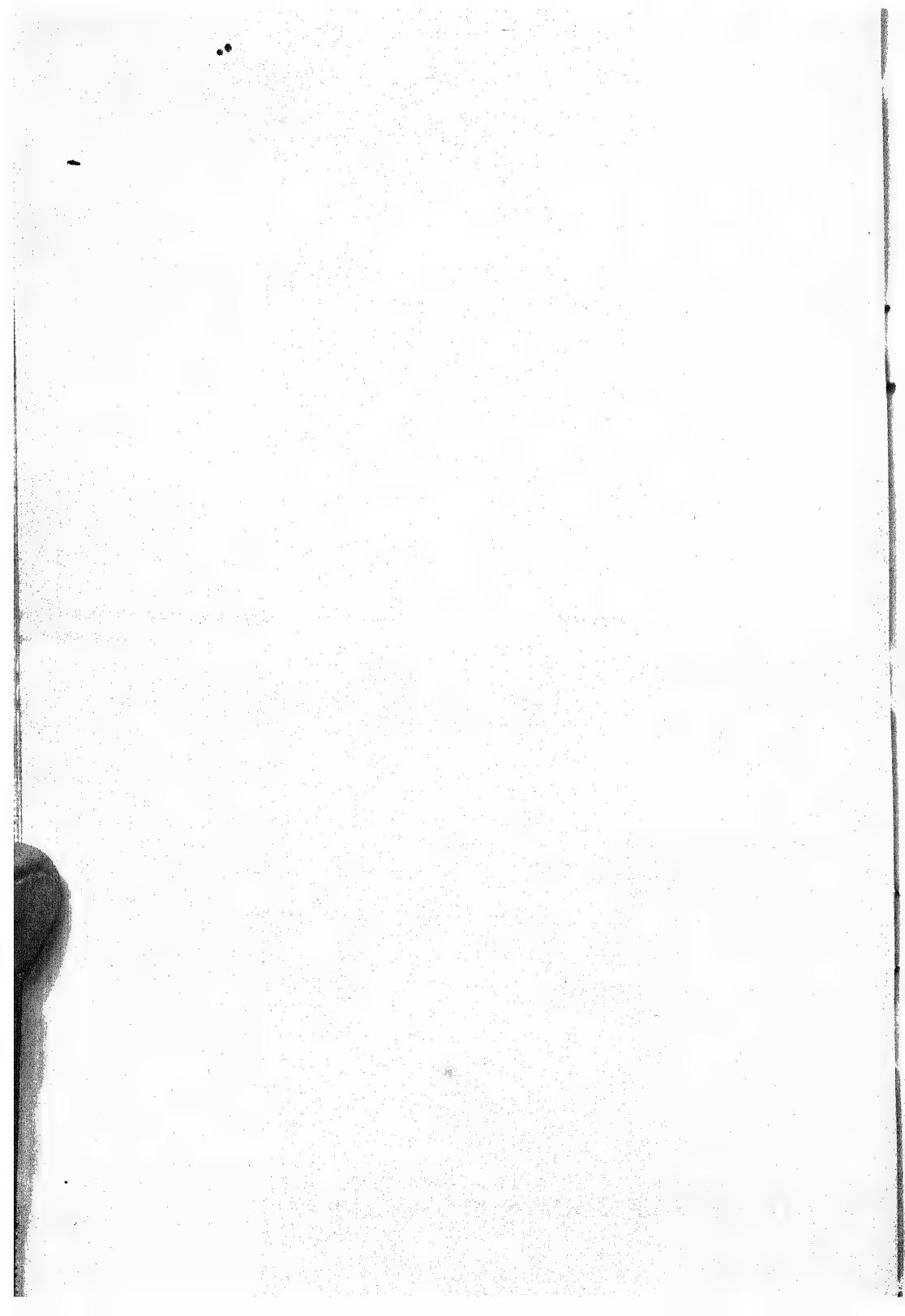
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THE LEGAL REPRESENTATIVES' SUITS ACT, 1855.

(ACT XII OF 1855¹.)

[Passed on the 27th March, 1855.]

An Act to enable Executor, Administrators or Representatives to sue and be sued for certain wrongs.

WHEREAS it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives; It is enacted as follows:—

(Notes).

1.—“Act XII of 1855.”

Act, where declared in force.

(a) This Act has been declared to be in force in the whole of British India, except as regards the Scheduled districts, by the Laws Local Extent Act, 1874 (XV of 1874), S. 3. **A**

(b) It has also been declared in force (1) in Angul District by the Angul District Regulation (I of 1894) S. 3; (2) in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), S. 3 as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), and (3) in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), S. 4. **B**

(c) It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri	...	Do. 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum	...	Do. 1881, Pt. I, p. 504.
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The Districts of Hazara, Peshawar, Kohat Bannu, Dera Ismail Khan and Dera Ghazi Khan (portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the districts of Peshawar and Kohat now form the North-West		

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(d) It has been extended by notification under S. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumaon and Garhwal	...	See Gazette of India, 1876, Pt. I, p. 606.
The Tarai of the Province of Agra	...	Do. 1876, Pt. I, p. 505.

1. An action may be maintained by the executors, administrators or representatives of any person deceased for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate ¹, for which wrong an action might have maintained by such person, so as such wrong shall have been committed within one year before his death ² * * *; an the damages, when recovered, shall be part of the personal estate of such person :

and further, an action may be mentioned against the executors or administrators or his heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death ³ * * *; and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

(Notes).

(Scope of section).

(1) Liability of heirs for wrongs committed by deceased person.

Act XII of 1855 does not apply to wrongs which do not survive to the representatives of a deceased person. The heir of a deceased husband is liable to make good the wrong committed by the husband. The plaintiff's right of suit does not abate by the death of the husband but survives against his heir. 1 W.R. 251.

(Scope of section)—(Continued).

(2) Section does not apply to suits against the original wrong-doer.

Cl. 2 of S. 1 of Act XII of 1855 does not apply to an action commenced against the wrong-doer in his lifetime, but only to actions commenced against the executors, administrators or other representatives of a deceased wrong-doer. Where therefore a suit is brought against the wrong-doer in his lifetime, such suit abates on his death. 28 M. 487. (13 B. 677, *F.*; 31 C. 406, *R. & Appr.*) **F**

(3) Suit against representative of agent of official assignee—Suit for money and for delivery of bonds and papers.

(a) Act XII of 1855 applies to suits for wrongs, which, according to the law then in force, did not survive to or against executors, administrators or representatives. 2 N.W.P. 103. **G**

(b) A suit for recovery of moneys due by an agent of the Official Assignee of an insolvent debtor's estate and for delivery of certain papers and documents belonging to such insolvent estate, will lie against the legal representative of such agent after his decease, and the right of action will not expire on his death. 2 N.W.P. 103. **H**

(4) Application of section.

This Act which deals with the maintenance of cases by executors, administrators or representatives of a deceased person for recovery of certain moneys, applies to cases where the person injured might in his lifetime have maintained, but had not instituted an action. 31 C. 406 (409-410). **I**

(5) Suit for wrong done by deceased person—Defamation.

A suit was maintainable under Act XII of 1855 against personal representatives for a wrong done by the deceased within a year of his death, although such wrong be of purely personal character,—as for example defamation. Marsh. 344 = 2 Hay. 325. **J**

(6) Malicious prosecution, suit for—Cause of action, survival of, as against heir of a deceased wrong-doer.

(a) The plaintiff sued to recover damages from the defendant's father, Ramdas, for wrongful arrest and malicious prosecution. During the pendency of the suit Ramdas died, and the plaintiff substituted the defendant as his heir and representative. The defendant contended that the suit abated. Both the Lower Courts disallowed the defendant's contention, and awarded damages to the plaintiff, to be recovered from the estate of the deceased. On appeal by the defendant to the High Court, *Held*, reversing the decision of the Lower Courts, that the suit abated on the death of Ramdas, his estate having derived no benefit, but, on the other hand, suffered loss, in consequence of his wrong-doing. 13 B. 677 (678). **K**

(b) It was contended for the plaintiff, in the above case, that Act XII of 1855 gave the plaintiff a right to continue his suit against the heir of Ramdas. *Held*, that Act XII of 1855 did not apply to a suit, such as this, brought originally against the wrong-doer himself, and only subsequently sought to be continued against his heir. 13 B. 677 (678). **L**

(c) This Act relates only to suits brought against the heirs of a deceased person for a wrong committed by the latter in his lifetime. 13 B. 677 (679). **M**

(Scope of section)—(Concluded).

- (d) The following observations of *Parsons, J.* in the above case are worthy of being noted—"We must, therefore, see whether by the common law such a suit as the present can be pursued against the estate of the deceased person. There can be no doubt that actions for wrongful arrest, for false imprisonment and for malicious prosecution are personal actions. It is a maxim of the common law that a personal action does not survive on the death, either of the person who did, or of the person who sustained the wrong, and, in the absence of statutory provision to the contrary, it still prevails unless the estate is affected by the tort"—Addison on Torts, 6th Ed., p. 57. That the above-quoted statement is correct in law, is shown by the cases cited as the authorities therefor. The cases of L.R. 24 Ch. D. 489 and 6 H.L. 377, may also be referred to in support of the same proposition. In the former it is laid down at pp. 454, 455, that "the only cases in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appear to us to be those in which property, or the proceeds or value of property, belonging to another, have been appropriated by the deceased person and added to his own estate or moneys. * * * * * Where there is nothing among the assets of the deceased that in law or in equity belongs to the plaintiff, and the damages which have been done to him are unliquidated and uncertain, the executors of a wrong-doer cannot be sued merely because it was worth the wrong-doer's while to commit the act which is complained of, and an indirect benefit may have been reaped thereby." Applying these principles to the present case, in which the estate of the wrong-doer did not benefit, but actually suffered, in consequence of his wrong-doing, we hold that the suit abated on the death of Ramdas, and that no right to sue the representative of Ramdas survived. 13 B. 677 (679, 680). N

1.—"Wrong.... Which has occasioned pecuniary loss to his estate."

- (1) Malicious prosecution—Suit for damages—Death of plaintiff before trial—Survival of cause of action.

- (a) A brought a suit for malicious prosecution claiming damages on the ground that he had suffered pecuniary loss in consequence of the costs incurred in defending the prosecution. Subsequently A dies while the suit was pending. The legal representatives of A then applied for, and obtained, leave from the Court to place their names upon the record in the place of A. At the hearing of the suit the question arose as to whether the cause of action survived.

Held, that the cause of action does not survive to the legal representatives of A, inasmuch as the pecuniary loss which A suffered by reason of expenses incurred in defending the prosecution is not an injury to his estate, and cannot be treated as separate and distinct from the original cause of action. 31 C. 406. *London v. London Road Car Co.*, 4 T. L. R. 448, R. O

- (b) Whether the amount of expense to which the plaintiff was put to in defending a malicious prosecution against him is "pecuniary loss" under the section, see Stephen on Malicious Prosecution, p. 117, S. 361, ill. (c) of the Civil Procedure Code, S. 89 of the Probate and Administration Act XII of 1855, and Mayne on Damages (6th Edn.), p. 467 referred to by counsel in *Argument* in 31 C. 406 (407). P

1.—“Wrong... Which has occasioned pecuniary loss to his estate”—(Cld.).

(c) Damages for an injury is recoverable, if caused to the personal estate. See *Twycross v. Grant* (1878), 4 C.P.D. 40; 8 C. 837, 845; cited in argument in 31 C. 406 (407). Q

(d) In the case of *Rai Jung Bahadur v. Rai Gudur Sahoy* (1 C.W.N. 537), damages were given on two grounds—(1) on the ground of a solatium for injury to the feelings of the person prosecuted, (2) as a reimbursement for legitimate expenses incurred by the plaintiff in his defence. See 31 C. 406 (407). R

(2) Pecuniary loss, what is.

The following observations of Henderson, J., are worthy of being noted in this connection:—“In the case of *Lendon v. Lendon Road Car Company* (4 T.L.R. 448), the question as to survival of an action for the personal injuries after the death of the plaintiff before trial arose. The personal injuries were the result of an accident, and it was admitted that under the general of law, an action for personal injury died with the person. There the plaintiff had claimed damages for loss of earnings and for various sums paid for medical expenses. In his judgment Lord Coleridge said that the action was for personal injuries, that is, for injuries to the person, and the heads of damages relied upon (except as to one matter) resulted directly from those personal injuries. He went on to say:—“No case showed that an action for personal injuries causing pecuniary loss could be continued after the death of the party injured, and the case of *Pulling v. The Great Eastern Railway Company*, L. R. 9 Q.B.D. 110 showed just the contrary”. In the case referred to by Lord Coleridge it was said: “None of the authorities go so far as to say that, where the cause of action is in substance an injury to the person, the personal representative can maintain an action merely because the person so injured incurred in his lifetime some expenditure of money in consequence of the personal injury” and further on “There is no decision which supports the proposition that because, in consequence of such injury, the person injured is put to expense, the case is brought within the category of cases to which the Statute of Edward III applies. Medical expenses are almost always made an element of damage in actions for injury to the person, but it has never before been suggested that the personal representative could maintain an action on the strength of such expenses.” 31 C. 406 (409). S

2.—“Within one year before is death.”

N.B.—1. The words “and provided such action shall be brought within one year after the death of such person” were repealed by the Indian Limitation Act, 1871 (IX of 1871), Sch. I.

N.B.—2. For limitation, see now the Indian Limitation Act, 1908 (IX of 1908).

3.—“Within one year before such person's death.”

N.B.—The words “and so as such action shall be commenced within two years after the committing of the wrong,” were repealed by the Indian Limitation Act, 1871 (IX of 1871) S. 2. For limitation, see now the Indian Limitation Act, 1908 (IX of 1908).

2. No action commenced under the provisions of this Act shall abate

by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased;
 Death of either party not to abate suit.

Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

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THE
FATAL ACCIDENTS ACT, 1855

(ACT XIII OF 1855.)

(WITH THE CASE-LAW THEREON)

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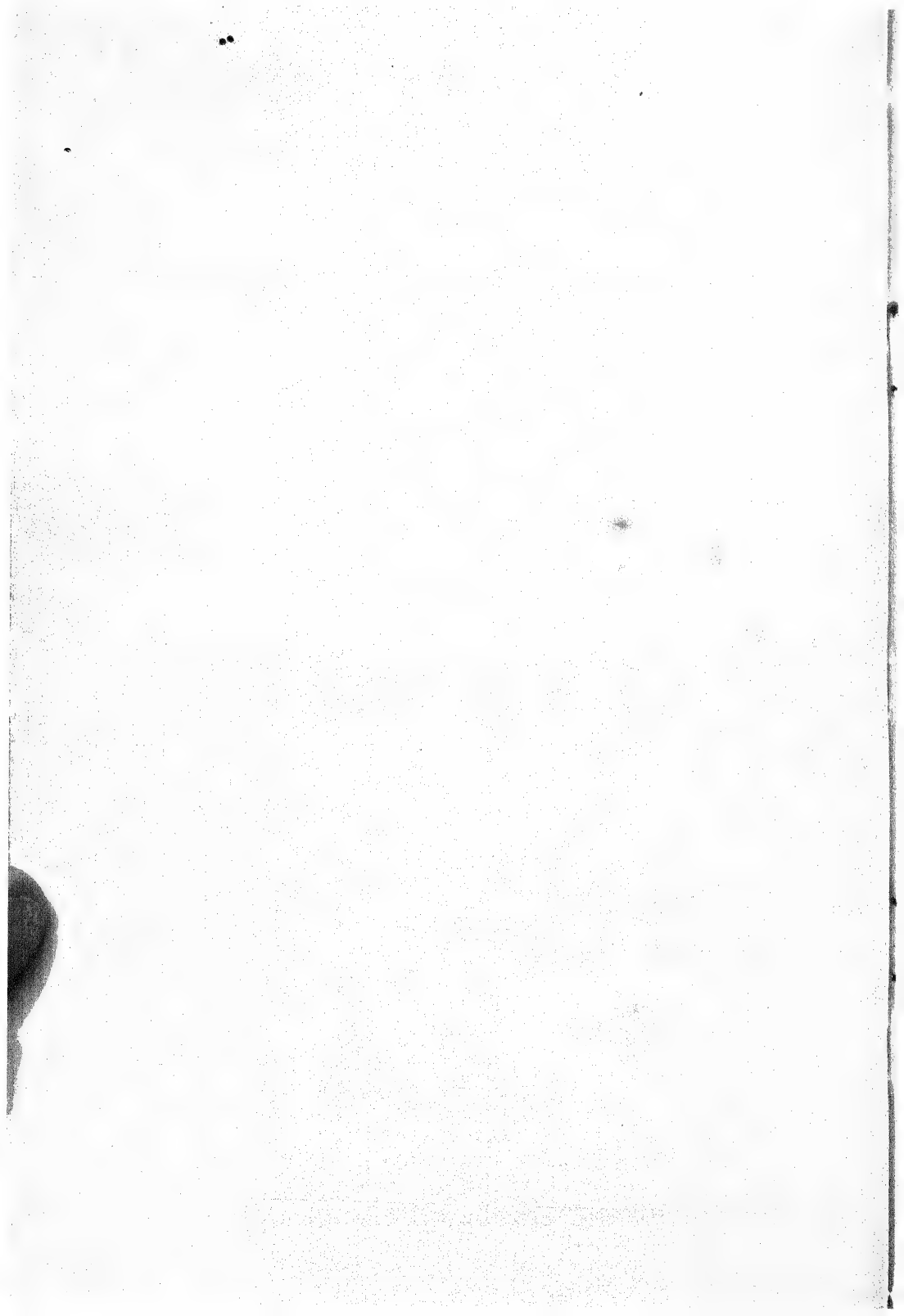
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THE FATAL ACCIDENTS ACT, 1855.

(ACT XIII OF 1855¹.)

[Passed on 27th March, 1855.]

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him ; It is enacted as follows :—

1.—‘Act XIII of 1855.’

N.B.—This Act is based on the Fatal Accidents Act, 1846 (9 & 10 Vic.) C. 93).

Act, where declared in force.

(a) This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874). **A-B**

(b) It has been declared in force (1) in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898) S. 4 (1) and Sch. I. (2) in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation 1899 (III of 1899), S. 3. (3) in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), S. 3. (4) in Angul District by the Angul District Regulation, 1894 (I of 1894) S. 3. **C**

(c) It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

Sindh.	...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri	...	Do. 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum		
...	Do.	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzapur District		
...	Do.	1879, Pt. I, p. 383.
Jaunsar Bawar	...	Do. 1879, Pt. I, p. 382.
The Scheduled Districts of the Punjab (some of these and portions of others now form the North-West Frontier Province, P & N.W. Code, Appx.		
...	Do.	1881 Pt. I, p. 483.

1.—“Act XIII of 1855”—(Concluded).

The Scheduled Districts of the Central Provinces	...	See Gazettee of India, 1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	...	Do. 1898, Pt. I, p. 870.
The District of Sylhet	...	Do. 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	...	Do. 1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District	...	Do. 1897, Pt. I, p. 1059.

(d) It has been extended, by notification under S. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

Kumaon and Garhwal	...	See Gazette of India, 1876 Pt. I, p. 606.
The Tarai of the Province of Agra	...	Do. 1876 Pt. I, p. 505.

1. Whenever the death of a person shall be caused by wrongful Act, neglected or default, and the Act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law two felony or other crime. And it is enacted further that every such action or suit shall be for the benefit of the wife, husband, parent and child ², if any of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative ³ of the person deceased; and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares at the Court by its judgment or decree shall direct.

(Notes).

1.—“Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.”

(1) Nature of the right conferred by the Act.

The relations of a person whose death was caused by the wrongful act of another could not, prior to the enactment of Act XIII of 1855, claim compensation on account of the death. Such a right to claim compensation was conferred by Act XIII of 1855. 15 M.L.J. 363= 28 M. 479.

1.—“Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong”—(Continued).

(2) This Act corresponds with Lord Campbell's Act in England.

The wording of this Act is almost identical with that of the corresponding English Act, commonly called Lord Campbell's Act the only difference (if it be one) being that in the English Act the jury are to give damages proportioned to the “injury” and in the Indian Act the Court is to give damages proportioned to the “loss” resulting from the death. 8 B.H.C.O.C. 130 (132). **G**

(3) Carrier—Duty of persons sending goods of a dangerous nature—Notice—Action for compensation for destruction of life.

(a) Held (Pearson, J. *dissenting*) that a person who sends an article of a dangerous and explosive nature to a railway company to be carried by such company, without notifying to the servants of the company the dangerous nature of the article, is liable for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable, or not. I. A. 60. **H**

(b) Held, also (Pearson, J. *dissenting*), that such a person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen, if he omits to take reasonable precaution to preclude the risk of explosion. 1. A. 60. **I**

MEASURE OF DAMAGES.

(i) The following observation of Stuart, C.J., in the above case throw light on the question of the measure of damages.

“Her (the wife's) loss is extreme, and, the defendant's liability to her being once reached, her claim for compensation must, in principle as well as in substance, be admitted. The law in force in India on this subject is regulated by Act XIII of 1855, which, on the preamble that “it is often-times right and expedient that the wrong doer in such case should be answerable in damages for the injury so caused by him,” proceeds to enact that the party injured may maintain an action, and that “every such action shall be for the benefit of the wife, husband, etc.” and that in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death.” There are no children in the present case, so that the loss is that of the plaintiff herself exclusively. The Subordinate Judge, in considering the question of damages, very properly takes into account the deceased's age, which he estimates was from 30 to 35 years, adding that, “by all accounts, the deceased was a strong, healthy, robust man and that it is not improbable that he might have lived to the age of 70 years” and he decides upon an allowance of, etc. It appears to me, however that the Subordinate Judge has conceived an undue estimate of native life. The proportion of natives who attain the age of seventy is, I believe, very small; and the atmosphere, work, and an attendance at an office connected with a railway station, such as that in Allahabad, is, in my opinion, not favourable to longevity, and all things considered, it appears to me that the offer suggested by Mr. Howard (on the assumption of his client's liability) is a fair one. That suggested offer was a monthly allowance of Rs. 15 secured by the investment of Rs. 3,000. 1. A. 60 (66). **J**

1.—“Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong” —(Continued).

(ii) The following observations also throw light on the fixing of the measure of damages in the case of a deceased trader or workman :—“What I have already said shows that the amount of damages claimed is quite preposterous. My difficulty is, satisfactory to myself, to fix any amount. In the case of such a person as the deceased, who, as the evidence shows, even in the last year he was in trade suffered serious loss, and who was habitually a reckless borrower of money, and certain thus to incur a heavy outlay for premium and interest, it is extremely difficult to say what portion of his gross earnings would in his future career have been properly available for his own use and that of his family. His prudence in making, and skill in executing, contracts as a ship and house carpenter, judging from his losses heretofore, would seem to have been but small. 7 B.H.C.O.C. 120 note. **K**

(4) Allowance to be made for maintenance.

(a) Where damages are allowed, a reasonable sum should be deducted on account of the maintenance for such period as the child might reasonably have been expected to live with her parents. 16 B. 254. **L**

(b) Negligence—Death by negligence—Suit for damages by parents of a child killed by negligence contributory negligence—Liability for negligence of servants—Damages—Deduction for maintenance of child—Funeral expenses. See 16 B. 254. **M**

(5) Other points considered in fixing the amount of compensation.

The following points were considered in measuring the damages to be awarded under the Act :—(1) the probable age of the deceased, (2) his state of health, (3) the probable length of time during which he would have sufficient strength to exercise his calling, (4) the state of dependence of his family upon him, and (5) where the deceased was a workman his prudence in making contracts and (6) his skill in executing such contract. 7 B.H.C.O.C. 119 note and 120 note. **N**

(6) Compensation for mental suffering, not allowable.

In assessing damages under Act XIII of 1855, the pecuniary loss sustained by the family of the deceased is all that can be considered and nothing can be allowed to the survivors as compensation for mental suffering, etc. 4 M.L.T. 238. **O**

(7) Compensation for funeral expenses not allowed.

In an action under Act XIII of 1855 no sum can be awarded in respect of funeral expenses, whether for removal or disposal of the body or for outlay for ceremonial or obsequial purposes. 13 B. 254. **P-Q**

N.B.—The same construction has been put on the corresponding provision of the English Act in *Walton v. S. E. Ry. Co.* 4 C.B. (N.S.) 296.

(8) Award of compensation by Criminal Court to relatives of deceased.

The accused struck his servant with a stick on his side, for refusing to obey certain orders given to him. The servant was at the time suffering from enlarged spleen, and its rupture caused his death. The Magistrate convicted accused under S. 304-A, Penal Code, and out of the fine imposed, awarded compensation to the relatives of the deceased, under Act XIII of 1855. *Held*, that the award of compensation was illegal. 7 P.R. 1877, Cr. **R**

1.—“Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong”—(Concluded).

- (9) Culpable homicide—Power of Court to grant compensation—Injury—Penal Code, S. 44.

Held, by the Full Bench, that it is competent to a Court, under S. 545 of the Criminal Procedure Code, 1898, to award part of the fine imposed under S. 304 of the Penal Code for the offence of culpable homicide not amounting to murder to the widow of the person killed, in compensation for the injury caused by the offence committed, the loss of her husband's support affecting a widow prejudicially in a legal right, and being therefore “an injury” as defined in S. 44 of the Penal Code, for which substantial compensation can be awarded by a Civil Court. 17 P.R. 1898 Cr. F.B. (12 M. 352 and 21 M. 74 F.B. not F.). S

- (10) Measure of damages—English cases hearing on the point discussed and applied to cases under the Indian Act.

Although some difference of opinion would appear to have existed in England amongst judges sitting at Nisi Prius in the early cases tried under the English Act, as shown by the summing up of Mr. Baron Parke in *Armsworth v. South-Eastern Railway Company* (11 Jur. 758) and of chief Baron Pollock in 12 L.T.R. 93, it was afterwards clearly laid down by the Queen's Bench in *Balke v. Midland Railway Company* 18 Q.B. 93 that the principle upon which damages are to be assessed is that of a loss of which a pecuniary estimate can be made; and that therefore, compensation in the form of a solatium could not be given. Further, it was laid down, both by the Court of common Pleas in *Dalton v. South Eastern Railway Company* 4 C. B. N.S. 296 and by the Exchequer Chamber in *Franklin v. South Eastern Railway Company* 3 H. & N. 211 that the pecuniary advantage was not to be confined to one for which the deceased would have been legally liable, but might be one of which the claimant had a reasonable expectation. Both these principles were adopted and applied by the Exchequer Chamber in *Pym v. Great Northern Railway Company* 32 L.J.Q.B. 377. Chief justice Earle, who delivered the judgment of the Court says:—The jury were bound to give damages for the money which they supposed lost by the reasonable probability of pecuniary benefit being taken away by the death.” We see no reason for applying a different principle to cases under the Indian Act. 8 B.H.C.O.C. 180 (132, 133). T

2.—“Child.”

Son adopted after death by widow of deceased—Legal representative—Child—Damages—Measure of damages.

- (a) A son adopted by the widow of a deceased Hindu (in respect of whose estate no probate, letters of administration, or certificate of heirship has been granted) is the legal representative of the deceased, and as such, is entitled to maintain a suit under Act XIII of 1855 for the benefit of the persons, if any, entitled to compensation for the injury occasioned to them by the death of the deceased against those whose negligence caused that death. 7 B.H.C.O.C. 113. U
- (b) Such an adopted son is not, however, entitled to have any portion of the damages awarded in the suit allotted to him as a child of the deceased. 7 B.H.C.O.C. 113. Y

2.—“Child”—(Concluded).

- (c) *Quære*.—Whether a son if adopted by the deceased in his lifetime, would be entitled to damages under the Act? Measure of damages in actions brought under Act XIII of 1855, how ascertained, pointed out. 7 B. H.C.O.C. 113. **W**

3.—“Representative.”

“Representative” Meaning of.

- (a) It is not correct to say that the term “representative” as used in this Act has no application to Europeans and Eurasians, nor is it to correct to say that it includes all the heirs” of the deceased. 15 M.L.J. 363. **X**
- (b) The term means and includes all or any one of the persons for whose benefit a suit under the Act can be maintained. 15 M.L.J. 363. **Y**

2. Provided always that not more than one action or suit shall be

brought for, and in respect of the same subject-matter
 of complaint 2 : * * * * *
 Not more than one suit to be brought 1. * * * * *
 * * * * * provided that, in any such action or suit,

the executor, administrator or representative of the deceased may insert a
 claim for and recover any pecuniary loss to the estate of
 the deceased occasioned by such wrongful act, neglect
 or default, which sum when recovered, shall be
 deemed part of the assets of the estate of the deceased.

1.—“Not more than one suit to be brought.”

- (1) “The claims of all persons beneficially interested to be decided in same suit.

Only one suit is allowed to enforce the claims of all the persons beneficially entitled, and, in such suit, the rights of each and every one of them shall be adjudged and adjusted by the Court. 15 M.L.J. 363. **Z**

- (2) Who can bring suits under this Act.

Such suit may be brought by the executor or administrator of the deceased, or where there is none such, or where such executor or administrator fails, or is unwilling to sue, the suit may be brought by and in the name of the representatives of the deceased. 15 M.L.J. 363. **A**

- (3) One of several persons beneficiary entitled to compensation being major—Suit by minor beneficiary after one year—Bar of Limitation.

- (a) The right of the beneficiaries to compensation is a right distinct in each so that the beneficiaries are not entitled to claim compensation jointly, but are entitled to claim relief severally in respect of the same cause of action. 15 M.L.J. 363. **B**

- (b) Where, of several beneficiaries entitled to claim compensation under Act XIII of 1855, some are under no disability while others are, the latter will not be entitled to claim the benefit of S. 7 of the Limitation Act, 1877, and are neither “joint creditors” nor “joint claimants” within the meaning of S. 8 of the same Act, so that, a suit brought by persons under disability under such circumstances will be barred if brought more than one year after the accrual of the cause of action. 15 M.L.J. 363. **C**

- (c) The term “joint claimant” in S. 8 of the Limitation Act, 1877, is used with reference to persons whose substantive right is joint, or, who possess the same identical substantive right, and not to persons whose rights are distinct and different. 15 M.L.J. 363. **D**

2.—“Subject-matter of complaint.”

N.B. 1.—The words “And that every such action shall be brought within twelve calendar months after the death of such deceased person” after the word “complaint” were repealed by the Indian Limitation Act, 1871 (IX of 1871).

N.B. 2.—For Limitation, See the Indian Limitation Act, 1908 (IX of 1908).

3. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Plaintiff shall deliver particulars, etc.

4. The following words and expressions are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word “person” shall apply to bodies politic and corporate; and the word “parent” shall include father and mother¹ and grandfather and grand-mother; and the word “child” shall include son and daughter and grand-son and grand-daughter and step-son and step-daughter.

Interpretation clause.

(Note).

1.—“Father and mother.”

N.B.—Step-father and step-mother are designedly omitted.

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THE
OFFICIAL TRUSTEES ACT, 1864

(ACT XVII OF 1864.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

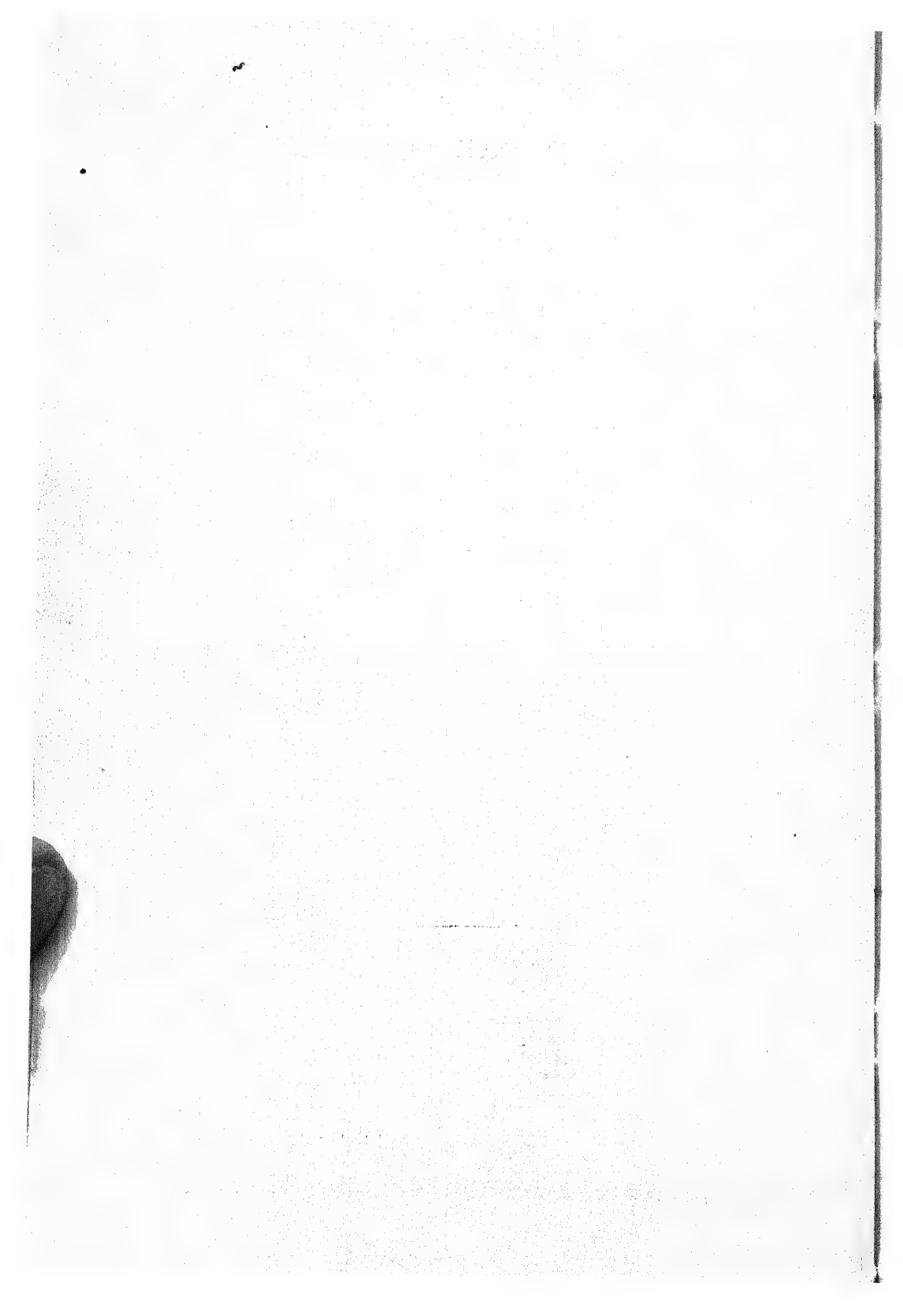
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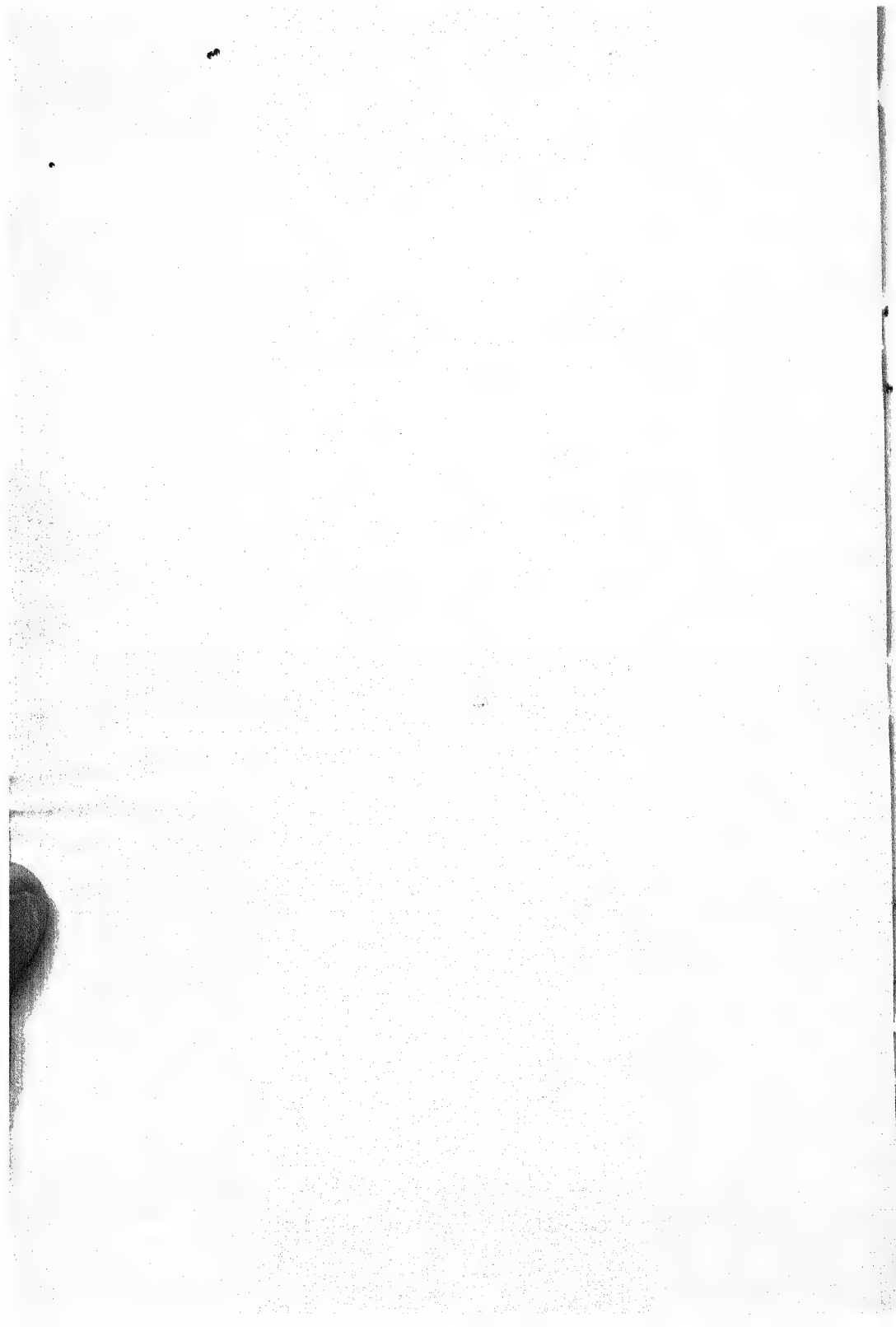
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THE OFFICIAL TRUSTEES ACT, 1864¹.

(ACT XVII OF 1864.)

[Passed on the 24th March, 1864].

An Act to constitute an Office of Official Trustee.

WHEREAS it is expedient to amend the law relating to Official Trustees and to constitute an Office of Official Trustee ;
Preamble. It is enacted as follows :—

(Notes).

1.—“ The Official Trustees Act, 1864.”

(1) Statement of Objects and Reasons.

For statement of Objects and Reasons to the Bill which was passed into law as Act XVII of 1864, See Calcutta Gazette, 1863, p. 2006. **A**

(2) Proceedings in Council.

For proceedings relating to the Bill, See Gazette of India, Supplement, 1864, pp. 83, 86, 98 and 122. **B**

1. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the context repugnant to such construction, that is to say :—
Interpretation.

The word “ Government ”¹ shall mean, in relation to the Presidency of Fort William in Bengal, the Governor-General in Council; in relation to the Presidency of Fort. St. George, the Governor of Fort St. George in Council; and in relation to the Presidency of Bombay, the Governor of Bombay in Council :

The Expression “ High Court ” shall mean Her Majesty’s High Courts of Judicature at Fort William in Bengal, Fort St. George and Bombay, respectively, in the exercise of their original civil jurisdiction.
“ High Court. ”

The expression “ Chief Justice ” shall mean the Chief Justice or Acting Chief Justice for the time being of any of the said High Courts.
“ Chief Justice. ”

The word “ person ” shall include a corporation.
“ Person. ”

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular.
Number.

Words importing the masculine gender shall include females.
Gender.

(Note).

1.—“Government.”

N.B.—The definition of the word “Government” in S. 1 was inserted by the Probate and Administration Act, 1890 (II of 1890), S. 1.

2. In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George and the Presidency of Bombay shall, as regards all persons for whom the Governor-General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras and the Presidency of Bombay, respectively, as those expressions are severally defined in the law for the time being in force relating to the office and duties of Administrator-General.

(Note).

N.B.—S. 2 was inserted by the Probate and Administration Act 1890 (II of 1890), S. 2, Genl. Acts. Vol. IV. The original section as to repeal of Act XVII of 1843 was repealed by the Repealing Act, 1870 (XIV of 1870).

3. [Official Trustees under Act XVII of 1843 continued.] *Rep. by the Repealing Act, 1891 (XII of 1891).*

4. In each of the Presidencies of Fort William in Bengal, Fort St. George and Bombay, there shall be an Official Trustee.

The said Official Trustees shall be called the Official Trustee of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay, respectively.

(Notes).

(1) Public Officer—Official Trustee—Notice of suit—Tortious Act.

(a) The Official Trustee is a “public officer” within the definition of the term given in S. 2 of the Civ. Pro. Code. 7 C. 499. **C-E**

(b) The cases in which a public officer is entitled to notice of suit under S. 424 of the Code, are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties, and the object of giving notice is that if a public body or officer entrusted with powers happens to commit an inadvertence, irregularity, or wrong, before any one has a right to require payment in respect of that wrong, he shall have an opportunity of setting himself right, making amends, restoring what he has taken, or paying for the damages he has done. 7 C. 499. **F**

(c) The Official Trustee, therefore, is not entitled to notice of suit, when the question to be decided relates to the rights of the *cestuis que trustent* in respect of the trust-fund, and not to a wrong committed by him. 7 C. 500. **G**

(2) C.P.C., S. 268, 272—Public Officer—Attachment by notice.

(a) A decree against a married woman provided that the amount due under it should be payable out of the separate estate of the judgment-debtor.

The judgment-debtor was entitled to a life-interest in certain trust funds under a settlement of which the Official Trustee was the trustee. The decree-holder proceeded to execute his decree against this life-interest by notice to the Official Trustee under S. 272 of the Code of Civil Procedure, but there was no funds in the hands of the Official Trustee which would have been attachable under S. 263. The decree-holder now applied that the life-interest might be sold. Held that the interest of the judgment-debtor was not validly attached. 12 M. 250. H

(b) The Official Trustee is a public officer within the meaning of S. 2 of the Civ. Pro. Code. 12 M. 250. See, also, 7 C. 499; 11 M. 317. I

Appointment, suspension and removal of Official Trustees.

5. Every Official Trustee appointed under this Act¹ shall be appointed and may be suspended or removed from his office by the Government.

(Notes).

N.B.—This section was substituted for the original S. 5 by the Probate and Administration Act, 1890 (II of 1890), S. 3.

1.—“Every Official trustee appointed under this Act.”

N.B.—Every person holding the office of Official Trustee at the commencement of Act II of 1890 is to be deemed to have been appointed under Act XVII of 1864 as amended by Act II of 1890, see S. 8 of the latter Act.

Administrator-General may be Official Trustee.

6. The Administrator-General or Officiating Administrator-General for the time being of any of the said Presidencies shall be eligible for the office of Official Trustee of that Presidency.

Security to be given by Official Trustee.

Every Official Trustee appointed under this Act shall give security for the due execution of the duties of his office in such manner and to such amount as the [Government]¹ shall direct.

(Note).

1.—“Government.”

N.B.—The word “Government” in S. 6 was substituted for the words “Chief Justice by whom he is appointed” by the Probate and Administration Act, 1890 (II of 1890), S. 4.

Leave of absence of Official Trustee.

7. [It shall be lawful for the Government] from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court.

Appointment of person to officiate.

Whenever any Official Trustee shall obtain leave of absence it shall be lawful for the Government to appoint some person to officiate as Official Trustee, and such person while so officiating shall be subject to the same conditions and be bound by the same responsibilities as the Official Trustee, and he shall be deemed to be the Official Trustee for the time being under this

Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed Official Trustee.

(Note).

N.B.—The words “It shall be lawful for the Government” at the commencement of S. 7 were substituted for the words “It shall be lawful for the Chief Justice of the High Court at any of the Presidencies” by Act II of 1890, S. 5.

8. If any person shall be about to grant, assign or settle any property, moveable or immovable, of what nature or kind soever, upon or subject to any trust, whether for a charitable purpose or otherwise, it shall be lawful for such person, with the consent of the Official Trustee to appoint him, by the deed creating the trust, to be the Trustee of such settlement;

Official Trustee may, with consent, be appointed Trustee of settlement by grantor, &c.

and upon such appointment the property so granted, assigned or settled shall vest ¹ in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed:

Vesting of property.

Provided always that the consent of the Official Trustee shall be recited in the said deed, and that the deed shall be duly executed by the Official Trustee:

Recital of consent.

Provided also that no trust for any religious purpose shall ever be held by the Official Trustee, under this or under any other section of this Act.

(Notes).

1.—“Property so granted....shall vest.”

Property, meaning of—“Vesting,” meaning of.

(a) “Property” in the Official Trustees’ Act was meant also to include action or actionable claims, and the vesting thereof was intended to have the effect of giving the Official Trustee complete power of enforcing all claims or demands in respect of the trust estate. 4 C. W. N. 70. **J-N**

(b) The main purpose of the Official Trustee’s Act was to place the Official Trustee and his successors in office in the same position and vested with the same powers as the persons who held the property in trust previous to the appointment of the Official Trustee, and a wide meaning must be given to the words “property” and “vest”. 4 C.W.N. 70. **0**

Remuneration of Official Trustee appointed under section 8.

9. Every Official Trustee appointed trustee of any property under the last preceding section shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

Other circumstances under which Official Trustee may be appointed Trustee of property.

10. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court, or

if property is subject to a trust, and all the trustees, or the surviving or continuing trustee and all the persons beneficially interested in the said trust shall be desirous that the Official Trustee shall be appointed in the room of such trustees or trustee,

then and in any such case it shall be lawful for the High Court on petition, and with the consent of the Official Trustee, to appoint the Official Trustee to be the trustee of such property ;

and upon such appointment such property shall vest in the Official Trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

(Notes).

General.

- (1) Practice—Official Trustee, Appointment of—Consent of Beneficiaries—Evidence Act (I of 1872), S. 85, Affidavit, Sufficiency of.

On an application under S. 10 of the Official Trustee's Act where the petition was not signed by one of the beneficiaries, the Court held, upon other evidence, that such beneficiary was desirous of having the Official Trustee appointed as trustee of the will. 25 C. 856 (857). P

- (2) Trustees' and Mortgagees' Powers Act (XXVIII of 1866), S. 34—Indian Trustee Act XXVII of 1866, Ss. 6, 26.

The plaintiff as a creditor of S. E. E. had obtained letters of administration to his estate and now brought this suit for the recovery of Rs. 12,000 on a mortgage which had been executed in favour of S. E. E.; S. E. E. in his lifetime was the trustee of a sum of Rs. 70,000 and the Official Trustee, who had been appointed trustee in his place and who was made a defendant in this suit, claimed the benefit under the said mortgage on the allegation that the said sum had been advanced by S. E. E. out of the trust funds. The plaintiff contended that she was entitled to the usual mortgage decree and to get in the money thereunder and that the proper course for the rival claimants to the money represented by the plaintiff in her personal capacity on the one side and the Official Trustee on the other, was then to proceed to establish their rights to the money by separate suit or otherwise. *Held*—that the contention of the plaintiff was not correct and the Court was bound to determine the question raised by the plaintiff representing the estate of the deceased and the Official Trustee representing the trust estate, and that the Official Trustee could adduce evidence in this suit to show that the money was advanced out of the trust estate. 4 C.W.N. 70.

11. The Official Trustee shall be entitled by way of remuneration in respect of all trust-property transferred to him under the last preceding section, to a commission, the rate of which shall be as follows, that is to say,—

Rate of commission under section 10.

on all capital moneys received by him, a commission of one-half per cent. on receiving the same;

on all capital moneys invested by him, a commission of one-half per cent. on investing the same;

on all sums received by him by way of interest or dividends in respect of moneys invested, a commission of three-quarters per cent.;

on all rents collected by him, a commission of two and a half per cent.:

[Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration, in respect of the capital moneys, sums and rents aforesaid, or any of them, to a commission at rates or at a rate to be specified in the order and exceeding the rates or rate hereinbefore in this section prescribed].

(Note).

N.B.—The proviso to S. 11 was added by the Probate and Administration Act, 1890 (II of 1890), S. 6.

12. The Official Trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust moneys in his hand.

The commission to which the Official Trustee shall be entitled is intended to cover all the expenses and risk and responsibility of management, collection and distribution.

13. It shall in no case be lawful to appoint the Official Trustee to be a trustee along with any other person; but the Official Trustee shall always be sole trustee.

Investment of trust-money.

14. The Official Trustee shall cause all capital moneys received by him to be invested in Government securities, or otherwise as the Court shall direct:

and, if in any case the trust-funds or any part of them shall at the time of their vesting in the Official Trustee be invested otherwise than as provided in the deed or will creating the trust or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the

Alteration of improper investment.

funds so improperly invested, and to invest the same in Government securities or otherwise as the Court shall direct.

High Court may make orders as to trust-property vested in Official Trustee.

15. The High Court may make any such orders as shall seem to it necessary respecting any trust-property vested in the Official Trustee, or the interest or produce thereof.

All such orders shall be made on petition, unless the Court shall direct a suit to be instituted.

16. Nothing in this Act shall prevent the retransfer of any trust-property which may have become vested in the Official Trustee to the original or any subsequently appointed trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or will creating the trust.

Re-transfer of trust-property to original, or transfer to other trustee.

17. All orders which shall be made appointing any Official Trustee to act as trustee in virtue of his office shall appoint him by his name of office and shall authorise the Official Trustee for the time being of the same Presidency to act as Official trustee of the property to which such order shall relate :

Order of appointment of Official Trustee.

and all property and interests which at the time of the death, resignation or removal from office of any Official Trustee shall be vested in him by virtue of such order, shall upon such death, resignation or removal cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto :

On death, &c., of Official Trustee, property to vest in successor.

and all books, papers and documents kept by such Official Trustee by virtue of his office shall be transferred to and vested in his successor in office.

Transfer of books, &c.

18. All actions, suits or other proceedings which shall be commenced by or against any Official Trustee in his official character may be brought by or against him by his name of office ;

Official Trustee to sue or be sued by his name of office.

and no suit, action or other proceeding already commenced or which shall be commenced by or against any person as Official Trustee, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Official Trustee ;

Suit not to abate by death, &c.

but the same may, by order of the Court and upon such terms as to the service of notices or otherwise as the Court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred :

Continuance of suit.

Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his office, or the heirs, executors, administrators or representatives of a deceased Official Trustee, from being liable for any such costs.

19. Every Official Trustee appointed under this Act shall enter into books to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods and things, as shall come to his hands, or to the hands of any person employed by him, or in trust for him, under this Act and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively ;

which said books shall be kept in the Official Trustee's office, and shall be at all times open for the inspection of the Chief Justice and of any person authorized by him to demand inspection thereof.

20. The Chief Justice shall have power, from time to time, to make and alter any general rules and orders consistently with the provisions of this Act—
for the safe custody of the trust-funds and securities which shall come to the hands or possession of the Official Trustee, and

for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases where such remittances shall be required,

and generally for the guidance and government of the Official Trustee in the discharge of his duties ;

and may by such rules and orders, amongst other things, direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and the other property belonging to the trust of which the Official Trustee is the trustee shall be kept or invested or deposited, and how any remittances thereof shall be made.

21. Such orders shall be published in the official Gazette, and it shall be the duty of the several Official Trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Official Trustee to furnish annual schedules, which shall be filed in High Court.

22. The Official Trustee of each of the said Presidencies shall once in every year, that is to say, on the first day of March, or on such other day as the Chief Justice shall direct, deliver to the Chief Justice—

a true schedule showing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee, and the balances during the year ending on the thirty-first day of December next before the day of delivering such schedule; and

a true list of all securities received on account of each of the said trusts during the same period; and also

a true schedule of all trusts which shall have come to an end or of which the Official Trustee shall have ceased to be the trustee and the property subject to which shall have been paid or made over to the persons entitled to the same or to new trustees during the same period, specifying the nature and amount or value of such property and the persons to whom paid or made over.

The Chief Justice shall cause the said schedules to be filed as record in the High Court; but it shall not be lawful for any person to inspect the same or to make copies thereof, or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

Filing and inspection of schedules.

23. The Chief Justice shall from time to time appoint an auditor or auditors to examine the accounts of the Official Trustee at the time of the delivery of the said schedules and also at any other time when the Chief Justice shall think fit.

Chief Justice to appoint auditors.

Auditors to examine schedules and accounts of Official Trustee and to report to Chief Justice.

24. The auditor or auditors shall examine the schedules and accounts, and report to the Chief Justice—

whether they contain a full and true account of every thing which ought to be inserted therein, and

whether the books which by this Act are, or which by any such general rules and orders as aforesaid shall be, directed to be kept by the Official Trustee have been duly and regularly kept, and

whether the trust-funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditor's power to summon witnesses and to call for books, &c.

25. Every auditor shall have power—

to summon as well the Official Trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and

to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation to be by him administered ; and

to call for all books, papers, vouchers and documents which shall appear to him to be necessary for the purposes of the said reference ;

and, if the Official Trustee or other person or persons when summoned shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined the auditor or auditors shall certify such neglect or refusal in writing to the High Court ;

Report to High Court of refusal or neglect to attend, or to produce books, &c.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Penalty.

26. The costs and expenses of preparing the said schedules and accounts and of every such reference and examination as aforesaid shall be defrayed by all the trust-estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust-estates, shall be ascertained and settled by the auditor or auditors, subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee.

Costs of preparing schedules, &c., how paid.

27. If upon any such reference and examination the auditor or auditors shall see reason to believe—

Matters to be reported by auditors.

that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or

that the trust-funds and securities have not been duly kept and invested or desposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or

that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders, he or they shall report accordingly to the Chief Justice.

28. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate-General for the Presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust-estates then or formerly under the charge of such defaulter ;

Proceedings upon such report.

and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses

who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

29. The costs, including those of the Advocate-General, and of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed either by the defendant or defendants, or out of the trust-estates rateably as the said Court shall direct ;

Costs upon such proceedings, &c., how defrayed.

and whenever any costs shall be recovered from the defendant or defendants the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Effect and execution of orders.

30. Any orders which shall be made by any of the said High Courts shall have the same effect and be executed in the same manner as decrees.

31. Any order under this Act may be made on the application of any person beneficially interested in any trust-property, or of any trustee thereof, whether under disability or not.

Who may apply for order under Act.

32. If any infant or lunatic shall be entitled to any gift or legacy or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy, residue or share, to pay or transfer the same to the Official Trustee appointed under this Act :

Executor or administrator may pay to Official Trustee legacy, share, &c., of infant or lunatic.

Provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition.

Leave of Court.

Any money or property paid or transferred to the Official Trustee or vested in him under this section shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

Provisions applied to such property.

33. The official Trustee shall comply with such requisitions as may be made by the Government for returns and statements in such form and manner as the Government may deem proper.

Compliance with requisitions for returns.

(Note).

N.B.—This section was added by the Probate and Administration Act, 1890 (II of 1890), S. 7.

Division of the
Presidency of Fort
William in Bengal
into provinces.

34. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India.

- (a) divide the Presidency of Fort William in Bengal into as many Provinces as he thinks fit,
- (b) define the limits of each of those Provinces, and
- (c) appoint an Official Trustee for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—
 - (i) the office of Official Trustee of Bengal shall cease to exist ;
 - (ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein ;
 - (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor-General in Council ;
 - (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf ;
 - (v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge or sole Judge, as the case may be, of a High Court appointed by the Governor-General in Council under clause (iv) of this sub-section, and the expression 'Advocate-General' a Government Advocate or other officer appointed by the Governor-General in Council to discharge for a Province the functions under this Act of an Advocate-General for a Presidency ; and,
 - (vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province be construed, so far as may be, to apply to the Official Trustee appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into

Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in Office of the Official Trustee of Bengal, and shall hold and execute the trust of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

(Notes).

N. B.—1—This section was added by the Probate and Administration Act, 1890, (II of 1890), S. 7.

N. B.—2—Sub-s. (3) to this section was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), S. 48. It was of follows :

(3) "The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (IV) of sub-section (1)".

R

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THE
PARSEE INTESTATE SUCCESSION
ACT, 1865

(ACT XXI OF 1865)

(WITH THE CASE-LAW THEREON)

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THE PARSEE INTESTATE SUCCESSION ACT, 1865.

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THE PARSEE INTTESTATE SUCCESSION ACT, 1865. (ACT XXI OF 1865.)

[Passed on the 10th April, 1865.]

An Act to define and amend the law relating to Intestate Succession
among the Parsees.

WHEREAS it is expedient to define and amend the law relating to
Intestate Succession among the Parsees ; it is enact-
ed as follows :

(Notes).

1.—“ The Parsee Intestate Succession Act, 1865.”

(1) Statement of Objects and Reasons.

For statement of Objects and Reasons of the Bill which was passed into Law as
Act XXI of 1865, See Gazette of India 1865, p. 219. A

(2) Proceedings in Council.

For proceedings relating to the Bill, see *ibid*, Supplement pp. 68, 69, 113
and 154. B

N.B.—As regards testamentary succession, Parsees are governed by the Indian
Succession Act, X of 1865. See Henderson's Testamentary Succession,
3rd Ed. p. 2.

(3) Act, where declared in force.

- (a) This Act has been declared to be in force in the whole of British India,
except as regards the Scheduled Districts, by S. 3 of the Laws Local
Extent Act, 1874 (XV of 1874).
- (b) It has also been declared to be in force in Arakan Hill District by the
Arakan Hill District Laws Regulation, 1874 (IX of 1874), S. 3.
- (c) It has been declared to be in force in Upper Burma generally (except the
Shan States) by the Burma Laws Act 1898 (XIII of 1898).
- (d) It has been declared, by Notification under S. 3 (a) of Scheduled Districts
Act, 1874 (XIV of 1874), to be in force in the following Scheduled
Districts, namely :—

Sindh.	...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpeiguri.	...	Do. 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum.	...	Do. 1881, Pt. I, p. 504.
The Scheduled Districts in Ganjam and Vizagapatam.	...	Do. 1898, Pt. I, p. 870.
Kumaon and Garhwal.	...	Do. 1876, Pt. I, p. 605.
The Scheduled portion of the Mirzapur District.	...	Do. 1879, Pt. I, p. 383.
Jaunsar Bawar.	...	Do. 1879, Pt. I, p. 382.
The Districts of Hazaral Peshwar, Kohat Bannu, Dera Ismail Khan and Dera Ghazi Khan. (<i>portions of the Districts of Hazara,</i>		

1.—“The Parsee Intestate Succession Act, 1865”—(Concluded).

Banmu, Dera Ismail Khan and Dera Ghazi Khan and the districts of Peshawar and Kohat now from the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575; but its application to that part of the Hazara District known as Upper Tanawal is barred by the Hazara (Upper Tanawal) Regulation 1900, (2 of 1900, S. 3), Punjab and N.W. Code).

...	Do.	1886, Pt. I, p. 48.
Ajmere and Merwara	Do.	1878, Pt. I, p. 380.
The District of Sylhet.	Do.	1879, Pt. I, p. 631.
The rest of Assam (except the north Lushai Hills).	Do.	1897, Pt. I, p. 299.

(e) It has been declared by Notification under S. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahawl. See Gazette of India 1886, Pt. I, p. 301.

(f) It has been extended, by Notification under S. 5 of the same Act to the Tarai of the Province of Agra. See Gazette of India 1876, Pt. I, p. 505.

General.

- (1) **Construction of Act**—If the form in which the Act was placed before the Legislative Council can be considered in construing the Act.

The following observations of Jardine J. may be noted as throwing light on the above mentioned point—“I hesitate to use the different forms in which the Act I have to interpret, was placed before the Legislative Council, in order to infer the probable intention of the framers in passing the section in question; although the remark of the Lord Chancellor on the Act of Uniformity in the case of *Herbit v. Purchas* (L.R. 3 P.C. 606, 648) is cited for the defendant as being not only a discussion of facts of history, but also as authority for collecting the intention of the framers of an Act from the alterations made in its terms before it reaches the stage of enactment. As remarked in *Gopal Pandey v. Parsotam Das* (5 A. 135) “It is for the Legislature to consider and determine whether the words which they employ in framing the Acts will give effect to the object and policy which the State has in view. We are, not doubt, at liberty to consider the general state of the law which prevailed, in *pari materia*, prior to the enactment of such statute under consideration.” 11 B. 1 (4).

- (2) **Law as to intestate succession among Parsis before the passing of the Act.**

Before the passing of this Act the Parsis in the town and island of Bombay were, as to succession, governed by the English law, as modified by Act IX of 1837, and in the mofussil, the Courts acting under Regulation IV of 1827, Ss. 26 & 27, took evidence of and enforced what were proved to be the usages of the Parsis in the locality. 11 B. 1 (4).

- (3) **Parsees in the mofussil—Usage of the community—Practice of English Equity Court, how far applicable.**

Before the coming into operation of the Parsee Succession Act 1865, the law governing the Parsees in the mofussil was the ascertained usage of the community modified by the rules of equity and good conscience. In such cases the practice of the English equity Courts would, it is

General—(Continued).

true, be followed with necessary modifications ; but the reference to these Courts would be not for the purpose of introducing special or peculiar doctrines of English law, but rather with the purpose of elucidating the principles of equity and good conscience and of giving systematic and uniform effect to them. 7 Bom. L.R. 988=30 B. 359.F

(3-a) Frame of the Act—Necessity of amendments.

To make the Act harmonious, amendments are necessary in several respects.

1. B. 506.

G

(3-b) Will by Parsi, failure of devise under—Negative words in will, whether can exclude heirs at law.

(a) The will made by the Parsi testator in this case had become completely inoperative, by the death of his brother to whom he had bequeathed his entire property under the following clause in his Will :—"Having excluded.....the persons mentioned above (my daughter and others), I appoint my elder brother, the sole heir of all my property after my decease."

H

Held that the testator must be taken to have died intestate, so that the estate should go in accordance, with the law of succession and that the use of mere negative words in the will excluding some of his would be heirs, cannot have the effect of precluding them from succeeding to their shares of his estate. 4 B. 537.

I

(b) On the question of the order of succession of the heirs of a Parsi, *held*, under the Parsi Succession Act that widows and children come in before brothers or sisters. 4 B. 537.

J

(4) Parsi Succession Act (XXI of 1865)—Indian Succession Act (X of 1865), Secs. 80, 98, 106—Bequest—Vesting of legacies—Stock.

(a) A Parsi testator provided by his will *inter alia* :—"To Dossibai, widow of my deceased brother Dhunjibhoy the sum of Rs. 25,000 upon trust to invest the same in promissory notes of Government of India in the names of my said executors and trustees of the survivors or survivor of them or other trustees or trustee for the time being of this my will and from time to time to pay the annual or half-yearly interest and dividends that shall from time to time become due and accrue thereon to the said Dossibai during her life and after her death upon trust to sell and dispose of the said Government Promissory Notes for Rs. 25,000 and to pay and divide the sale proceeds thereof to and between her issue by the said Dhunjibhoy Framji Warden according to the law or statute for the time being in force in India relating to intestate succession among Parsees." At the time of the testator's death, which took place in 1885, Dossibai had two sons and two daughters. Of them, one son, Framji, died in 1889; and, one daughter, Nawajbai died in 1888, Dossibai died in 1904. In a proceeding between the two remaining issue of Dossibai, on the construction of the foregoing clause in the will, two questions arose :—

- (1) As to when the legacy vested in the issue, *i.e.* whether it vested at the time of the death of the testator or at the time of the death of Dossibai.
- (2) Who was to be considered the stock in order to ascertain how the fund was to be distributed among the issue.

Held, (1) that the legacy became vested in the issue of Dossibai and Dhunjibhoy at the time of the testator's death.

General—(Concluded).

(2) That Dossibai was to be taken, as the stock.

(b) The expression "without any qualifying terms" in S. 80 of the Succession Act, 1865, refers to the bequest and not the relations. 7 Bom. L.R. 207. K

1. Where a Parsee dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

Division of property among widow and children of intestate.

2. Where a female Parsee dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

Division of property among widower and children of intestate.

(Notes).

(1) **Widower, meaning of the word—A widower on second marriage is still a widower relatively to deceased wife.**

- (a) In section 5 of the Parsi Intestate Succession the word "widower" means a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying. 11 B. 1. L
- (b) D., a Parsi, died intestate on the 19th September, 1885, leaving a widow, (the defendant), and two daughters, and the heirs of a predeceased daughter, J., him surviving. J. had been the wife of the plaintiff, and had died thirty-four years, before the date of this suit, leaving, as her heirs, her husband (the plaintiff) and one daughter, who was still living after J.'s death the plaintiff married again, and his second wife was living at the date of this suit. Letters of administration to D.'s estate were granted to his widow, the defendant. The plaintiff claimed a share in D.'s estate, contending that he was the widower of J., one of the daughters of the intestate and entitled, as such, under section 5 of the Parsi Intestate Succession Act XXI of 1865. *Held*, that he was the widower of J. within the meaning of the section, and, as such, was entitled to a share in D.'s estate. 11 B. 1. M

(1-a) **"Widower"—Various meanings of.**

- (a) "A widower is one who has lost his wife." Lathan's Edition of Johnson's Dictionary cited in 11 B. at page 4. N
- (b) "A widower is one whose wife is dead." Wharton's Law Lexicon cited in 11. B. at page 4. O
- (c) "A widower is one, who has lost his wife by death, and has not married again." Webster's cited in 11. B. at page 4. P
- (d) "A husband who has lost his wife is called a widower." Richard's Dictionary cited in 11. B. at page 4. Q

(2) **Parsi female—Succession.**

Where a Parsi female dies intestate and possessed of estate, real and personal, her whole estate, on her death, vests in her husband and children in the shares defined by S. 2 of the Parsi Succession Act. 5 Bom. L.R. 252. R

Division of property amongst children of male intestate leaving no widow.

3. When a Parsee dies leaving children but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

Division amongst children of female intestate leaving no widower.

4. When a female Parsee dies leaving children but no widower, the property of which she shall have died intestate shall be divided amongst the children in equal shares.

5. If any child of a Parsee intestate shall have died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

Division of pre-deceased child's share among widow or widower and issue of such child.

(Notes).

(1) Position of widow or widower of a predeceased son or daughter before and after the Act.

Whichever way section 5 may be construed, the position of the widow or widower of a predeceased son or daughter has been changed by the Act as compared with the previous law. Under that law such widow or widower would have taken nothing whether there were issues or not; but it is evident that under Section 5, if there be both widow or widower and issue, the widow takes something. So that there was in any event on the part of the Legislature an intention to change, in some respects at least, the position of the widow or widower of a predeceased son or daughter of an intestate Parsi. 1 B. 506 (511). S

(2) Parsi Succession Act—(XXI of 1865)—Intestate succession—Share of childless widow of predeceased son.

On a Parsi dying intestate leaving him surviving a widow, sons, daughters, the children of a predeceased son, and the childless widow of another predeceased son, and a posthumous daughter born afterwards to the intestate, the son's widow is entitled to a moiety of the share in the intestate's estate which would have fallen to her husband had he died immediately after the intestate; and the other moiety of such share devolves on the surviving issue of the intestate, including the posthumous daughter and the children of his other predeceased son. 1 B. 506. T

(3) S. 5, application of.

It is not a condition precedent to the application of S. 5, that the predeceased son of an intestate Parsi shall have left a widow and issue. 1 B. 506. U

6. Where a Parsee dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.

Division of property when intestate leaves widow, or widower, but no lineal descendants.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin (1) standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession: Provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

(Note).

"Next-of-Kin."

Next-of-Kin—Meaning of.

In both Ss. 6 and 7 of the Parsi Succession Act the words "next-of-kin" and "relatives" are synonymous, and are collective names for the persons mentioned in the first and second schedules respectively. 22 B. 909.V

Division of property when intestate leaves neither widow nor widower nor lineal descendants.

7. (a) When a Parsee dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

The next-of-kin⁽¹⁾ standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession: Provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

(Note).

General.

Application of the section & Sch. ii.

Only in cases where the decrees left neither lineal descendants, nor widow nor widower, as the case may be, would the provision of S. 7, and of Sch. ii, Art. 2, apply, 4 B. 537. W

1.—"Next-of-Kin".

Parsis—Intestate succession among Parsis—Next-of-kin—Construction of.

(a) One Jerbai, a Parsi widow, died intestate and without issue, her father, mother, three brothers and two sisters having predeceased her. Two of her brothers and one sister had left children. Some of these children had also predeceased her, leaving children (grand-nephews and nieces of Jerbai). Two of this last mentioned class had also predeceased her, leaving children, (great-grand nephews and nieces of Jerbai).

1.—“*Next-of-kin*”—(Concluded).

Held, that Jerbai's property should, in the first instance, be divided into three shares, *i.e.*, one for each of the two predeceased brothers who left children, and one for the predeceased sister who left a child. Each brother's share to be two-fifths and the sister's one-fifth. These shares to be sub-divided among the defendants of the two brothers and the sister respectively, no descendant being entitled to share concurrently with his or her ancestor and, on each division and sub-division, each male taking double the share of each female standing in the same degree of propinquity. 22 B. 909. X

(b) In article 2 of the second schedule of the Parsi Succession Act (XXI of 1865) the gift to lineal descendants is substitutional in the sense that they take nothing if the head of their branch of the family is living, whereas if he is dead, they stand in his place and take the share which he would have taken. In distributing an estate, therefore, “among brothers and sisters and the lineal descendants of such of them as have predeceased the intestate” the primary division must be *per stirpes*. If there are surviving brothers and lineal descendants of a predeceased brother, then each surviving brother will take equal shares with the lineal descendants collectively. If all the brothers are dead, then the share which each would have taken, had he survived, will be taken by his lineal descendants. If, in either case, the predeceased was a sister, her lineal descendants will take her half share only. 22 B. 909. Y

(c) In both Ss. 6 and 7 of of Parsi Succession Act the words “next-of-kin” and “relatives” are synonymous, and are collective names for the persons mentioned in the first and second schedules respectively. 22 B. 909. Z

Exemption of Parsees from parts of the Indian Succession Act, 1865. 1.

8. The following portions of the Indian Succession Act, 1865, shall not apply to Parsees (that is to say), the whole of Part III, the whole of Part IV, excepting section 25, the whole of Part V and section 43.

(Note).

General.

1—“*Exemption of Parsees from parts of the Indian Succession Act, 1865*”.

Scope of section—Application of English law.

- (a) In excluding by S. 8 of the Parsi Succession Act, from application to Parsis, S. 42 of the Indian Succession Act, which repeals the English rule as to advancement contained in the Statute of Distribution, S. 5, it was not the intention of the Legislature to preserve the last-mentioned, rule in force for the Parsi community. 2 B. 75. A
- (b) The rule followed by the Courts of Equity in England, whereby, notwithstanding the provisions of the Statutes of Limitation, the share of one of the next-of-kin in the estate of an intestate, while in the hands of the administrator, is liable for a debt due by the next-of-kin to the deceased, though barred at the date of the death of the latter, is to be applied in the Courts of British India. 2 B. 75. B
- (c) The rule laid down in *Graham v. Londonderry* (3 Atk. 393) with regard to a husband's rights over ornaments, given to his wife by her father applied to Parsis. 2 B. 75. C

THE FIRST SCHEDULE.

- (1) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.
- (2) Grandfather and grandmother.
- (3) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.
- (4) Great-grandfather and great-grandmother.
- (5) Great-grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

- (1) Father and mother.
- (2) Brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate.
- (3) Paternal grandfather and paternal grandmother.
- (4) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate,
- (5) Paternal grandfather's father and mother.
- (6) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.
- (7) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.
- (8) Maternal grandfather and maternal grandmother.
- (9) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
- (10) Son's widow, if she have not re-married at or before the death of the intestate.
- (11) Brother's widow, if she have not re-married at or before the death of the intestate.
- (12) Paternal grandfather's son's widow, if she have not re-married at or before the death of intestate.
- (13) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.
- (14) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.
- (15) Maternal grandfather's father and mother.
- (16) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
- (17) Paternal grandmother's father and mother.
- (18) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.

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THE
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(WITH THE CASE-LAW THEREON)

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THE OUDH ESTATES ACT, 1869.

(ACT I OF 1869).

[Passed on 12th January 1869.]

An Act to define the rights of Taluqdars and Others in certain Estates in Oudh, and to regulate the Succession thereto.

WHEREAS, after the re-occupation of Oudh by the British Government in the year 1858, the proprietary right in divers estates in that province was, under certain conditions, conferred by the British Government upon certain taluqdars and others; and whereas doubts may arise as to the nature of the rights of the said taluqdars and others in such estates, and as to the course of succession thereto; and whereas it is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned; It is hereby enacted as follows :—

I.—Preliminary.

1. This Act may be cited as "The Oudh Estates Act, 1869," and shall extend only to the estates hereinafter referred to.
- Short title. Extent of Act.

(Notes).

General.

(1) Object of Act.

In the Oudh Estates Act (I of 1869), rules were laid down as to the title of the taluqdars whose estates the Government had created and as to the mode of succession thereto. 10 C. 511 (P.C.) = 11 I.A. 51. A

(2) Scope of Act—Legal and equitable estates.

- (a) The Oudh Estates Act introduces a mode of tenure more nearly resembling the English principle of distinction between legal and equitable estates. 26 C. 81 (P.C.) = 25 I.A. 161 = 2 C.W.N. 737. B
- (b) So, it is not sufficient if a defendant alleges that the plaintiff, the registered taluqdar, is only a benamidar for him. The plaintiff holding the legal estate, will, by force of such estate, be entitled to recover unless the defendant could prove that a trust has been fastened to the estate. (*Ibid*). C

(3) Construction of statutes—Retrospective effect cannot be given.

It is not in accordance with sound principles of interpreting statutes to give them a retrospective effect. 7 O.C. 254 = 26 A. 119 = 6 Bom. L.R. 238 = 8 C.W.N. 801 = 31 I.A. 30 (P.C.). D

(4) Construction of statutes—Marginal notes.

It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The

General—(Concluded).

contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian Statute any greater authority than the marginal notes in an English Act of Parliament. 7 O.C. 248=26 A. 393=31 I.A. 132=11 Bom. L.R. 516=3 Ind. Cas. 359=1 A.L.J. 384=8 C.W.N. 699 (Reversing 3 O.C. 120). E

Interpretation-
clause. 2. In this Act, unless there be something repugnant in the subject or context—

‘Transfer.’ “Transfer 1” means ad alienation *inter vivos*.

“Will 2” means the legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death ;

‘Will.’ “Codicil” means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions ; it is considered as forming an additional part of the will ;

‘Codicil.’ “Signed” applies to the affixing of a mark ;

‘Signed.’ “Registered” means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh³ ;

‘Registered.’ “Minor” means any person who shall not have completed the age of eighteen years ; and “minority” means the status of such person ;

‘Minor.’ Minor- “Taluqdar” means any person whose name is entered in the first of the lists mentioned in section 8 ;

“Taluqdar.” “Grantee”⁴ means any person upon whom the proprietary right in an estate has been conferred by a special grant of the British Government, and whose name is entered in the fifth or sixth of the lists mentioned in section 8 ;

“Grantee.” “Estate” means the taluqa or immoveable property acquired or held by a taluqdar or grantee in the manner mentioned in section 3, section 4, or section 5, or the immoveable property conferred by a special grant of the British Government upon a grantee ;

“Estate.” “Heir” means a person who inherits property otherwise than as a widow, under the special provisions of this Act ; and

‘Heir.’ Legatee. “legatee” means a person to whom property is bequeathed under the same provisions ;⁵

Words expressing relationship. Words expressing relationship denote only legitimate relatives, but apply to children in the womb who are afterwards born alive.

(Notes).

1.—“Transfer.”

“Transfer,” whether includes mortgages.

The word “transfer” is defined in the Act as an alienation *inter vivos*, and necessarily includes a transfer by way of mortgage, 1 O.C. Suppl. 36.F

2.—“Will.”

(1) Construction of document, rule as to.

(a) Wills are comparatively new in any part of India, and are of more recent introduction in Oudh in respect to Talukdari estates; and instruments purporting to be such, should not be construed with too great nicety, nor much weight can be attached to the exact words used therein, as if the accurate distinction between a testamentary instrument and one operating *inter vivos* was clearly before the mind of the testator. 10 C. 792 (P.C.) = 11 I. A. 135. G

(b) There are frequent instances of instruments which are unquestionably wills, and intended to operate as such, in which nevertheless there have been expressions upon the face of them intimating that the testator intends to remain the owner of his property until he dies. (*Ibid.*) H

(c) In the present case, the eldest of three brothers had succeeded to an impartible family estate, and to a taluk also impartible, which had been, during the life-time of their father, entered in the first and second, but not in the third, of the list prepared in conformity with S. 8 of the Oudh Estates Act. Before his death, the eldest brother made an instrument registered as a will, but using the word “*tamlik*” and stamped as a deed whereby he gave the taluk to the third brother, reserving an interest on the whole for his life, and in half for any son that might be born to him with maintenance to his wife on her becoming a widow. Held, with reference to the indicia of a testamentary character, there being provisions for contingencies which might not be ascertained till the death of the maker of the instrument, as compared with the technical matters attending it, that this instrument was not a transfer *inter vivos* but was a will, and within the above Act. (*Ibid.*) I

(2) Testamentary intention expressed by talukhdar in a letter of reply to Government, whether constitutes will.

A letter sent by a talukhdar, in reply to enquiries made by the Government, regarding the succession to his estate and concerning his wish, as to the disposition of his property after his death, and intended by him to take effect as his will, falls within the definition of a will under S. 2, Act I of 1869. 18 C. 1 = 17 I.A. 82 (P.C.) (3 I.A. 259, R.). J

3.—“Registered according to the... Oudh.”

N.B.—As to the meaning of the word “Registered”, see Act X of 1885, post.

Provisions contained in Act VIII of 1871—Distinction between depositing will and registering it.

(a) The rules mentioned in this definition are to be found in Act VIII of 1871. 10 C. 976 A.C. = 10 I.A. 121. K

3.—“Registered according to the....Oudh” —(Concluded).

- (b) This Act VIII of 1871, contains very distinct set of provisions with respect to what is called depositing wills and registering them. (*Ibid.*) L
- (c) According to the provisions of that Act, by the deposit of a will no information is given to anybody who may search the register as to its contents, and the testator can at any time during his life-time withdraw it in the sealed envelope in which it was deposited; whereas, with respect to the registration, in the ordinary and proper sense of the word, of wills and other documents, there are provisions which would enable persons who searched the register to ascertain the contents of those documents. (*Ibid.*) M

4.—“Grantee.”

“Grantee” if *sanad* necessary for being a—

The proprietary right in certain villages, which had been settled with W.A. as a farmer, was granted to him by Government, at the regular settlement in reward for his loyal services. By reason of this grant, his name was recorded in the list of grantees (No. V). *Held*, that, although W.A. received no *sanad*, it may reasonably be held that the grant was a special one, and that the villages constituted his estate as “grantee” within the meaning of S. 2 of the Act. 1 O.C. Supl. 36.N

5.—“Under the same provisions.”

(1) “Same provisions”, meaning of—Bequest should be after passing of Act.

- (a) The expression “same provisions” means “the special provisions” of this Act. 3 O.C. 120. O
- (b) So, a person to whom property is bequeathed by a talukdar cannot be deemed to be a legatee within the meaning of S. 22 of the Act, unless the bequest was made after the passing of the Act and in the exercise of the powers conferred by S. 11 of the Act. (*Ibid.*) P

(2) “Legatee”, meaning of.

- (a) Where a bequest in favour of a person took effect before this Act came into operation, *held* that he was not a “legatee” within the meaning of this definition, as such a person cannot be considered to be a person to whom property was bequeathed under the special provisions of the Act. 7 O.C. 248=26 A. 393=31 I.A. 132=1 A.L.J. 384=8 C.W.N. 384=11 Bom.L.R. 516 (P.C.)=3 Ind. Cas. 359 (*On appeal from* 3 O. C. 120). Q
- (b) A legatee who succeeded as such before the passing of Act I of 1869, is not a “legatee” within the meaning of the Act. 8 O.C. 317 (P.C.)=27 A. 634=15 M.L.J. 352=9 C.W.N. 1009=2 C.L.J. 194. R

II.—Rights and liabilities of Taluqdars and Grantees.

3. Every taluqdar with whom a summary settlement ¹ of the Govern-

Taluqdars to have heritable and transferable rights in their estates.

ment revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a taluqdari sanad has been granted,

shall be deemed to have thereby acquired a permanent, heritable, and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by such taluqdar when such settlement was made,

or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from, having been affirmed,

subject to all the conditions ² affecting the taluqdar contained in the Subject to certain orders passed by the Governor-General of India on the conditions. tenth and nineteenth days of October 1859 and republished in the first schedule hereto annexed, and subject also to all the conditions contained in the sanad under which the estate is held ³.

(Notes).

General.

(1) Right of members of joint Hindu family in talukhdari estates.

A talukhdari estate, though entered in the name of one member of a joint family in the lists prepared under the Oudh Estates Act, may be subject to a trust, implied from the acts and declarations of the talukhdar, for the joint family as a joint estate. 14 C. 493= 14 I.A. 37 (P.C.). S

(2) Land restored and settled under the Oudh Estates Act of 1869—Recognition of equitable trust with respect to it.

(a) Notwithstanding the confiscation of the land in Oudh by the proclamation of Lord Canning, its restoration by his circular letter of the 10th October, 1859, affirming the absolute title of the grantees of summary settlements and the granting of a *sanad* with full power of alienation confirmed by the Oudh Estates Act of 1869, the legal owner may, either by express agreement or by his conduct, constitute himself in equity a trustee for others as to the whole or part of the beneficial interest in the land so restored and settled. 8 C. 769 (P.C.) = 11 C.L.R. 149. T

(b) A talukdar, deceased before annexation, had provided by will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew. Settlement was made with the senior widow after the mutiny; a *sanad* was granted to her as talukhdar, with full power of alienation, and her name was afterwards entered in the lists prepared under S. 8 of the Oudh Estates Act. But certain of her acts were not explicable except on the understanding that she was abiding by the will; *held*, in a suit by the widow next in order, that such senior widow had undertaken the trust of carrying out the provisions of the will, and that a deed of gift made by her transferred only her interest, which was an estate for life. (Ibid.) U.

(3) Registered talukhdar—Beneficial interests.

A person registered as a talukhdar under Act I of 1869, and has thereby acquired a talukhdari right in the whole property, may, nevertheless,

General—(Continued).

have made himself a trustee of a portion of the beneficial interest in lands comprised within the taluk for another, and be liable to account accordingly. 3 C. 522 (P.C.)=4 I.A. 178 (4 I.A. 198, 11 M. I.A. 127, R.). Y

(4) Title under *Sanad* from Government Trust.

- (a) Although a *sanad* granted by the Government subsequent to the Proclamation of 1858, of an estate in Oudh, confers an absolute legal title to the grantee, such grantee may, nevertheless, by an express declaration of trust, or by an agreement to hold in trust, constitute himself a trustee of the estate for a third party. 3 C. 645 (P.C.). W
- (b) Where, therefore, the Lower Courts, on the ground that the defendant's title under a *sanad* was absolute, declined to consider evidence which the plaintiff relied on as showing that the defendant really held for him as a trustee, the case was remanded by the Judicial Committee in order that such evidence might be received and considered. (*Ibid.*) X

(5) *Sanad* granted under Oudh Estates Act—Trust—Co-sharer's rights against *Sanad*-holder.

- (a) In 1858 when the three-year summary settlement was in progress, K, the respondents' ancestor, applied to have the settlement made with him. In this application he stated that the estate was ancestral property in which S, the appellants' ancestor, was a co-sharer. He further stated that S had absconded, but that, if he reappeared, he should get his share. The Settlement Officer entered the name of K alone as *malguzar*. S returned in 1859. The *Sanad* was granted to K in 1862 and his name was entered in lists 1 and 2 referred to in the Oudh Estates Act of 1869.

Held, that K became and was, as to the extent of S's share in the Estates comprised in the *sanad* granted to him, trustee for S; and that the appellants as representatives of S were entitled to recover it. 2 O.C. 199. Y

- (b) The fact that the *sanad* was granted to K alone would not deprive S of his rights. (*Ibid.*) Z

(6) Talukhdari estate, presumption of being held in trust for joint family—*Sanad* in favour of single member of joint family.

In a suit for possession of a village, brought against the defendants, the plaintiff alleged that he was, by virtue of his talukhdari *sanad*, and the provisions of Act I of 1869, the owner of the village of which the defendants had taken wrongful possession. The parties at the time of the annexation of the Province by the Government formed a joint Hindu family. No acts or declarations on the part of the plaintiff's father, who held the *kabuliati* of the village at the time of the annexation, or of the plaintiff were proved from which it could be fairly and reasonably inferred that either of them held the taluka in trust for the family. All that was shown was that the family lived in one enclosure, that food was supplied to the members of the family, by the plaintiff, that the plaintiff paid the funeral and marriage expenses of members of the family, that the plaintiff and his father granted lands by way of maintenance to members of the family, and that the defendants held sir-lands rent-free in the village in suit. A

General—(Concluded).

Held, that in all these things there was nothing consistent with the estate being held by the plaintiff's father and the plaintiff not as joint family estate governed by the rules of *Mitakshara*, but as one ordinarily devolving upon a single heir, which was the character ascribed to the estate in Act I of 1869. *Held*, therefore, that the defendants having failed to show that the plaintiff held the taluka in trust for the joint family as joint family estate and that they were in possession of the village in dispute in lieu of their share of the profits of the taluka, the plaintiff's claim was rightly decreed against them. 4 O.C. 214. B

(7) **Mortgage in possession prior to confiscation of Oudh estate—Dispossession on re-settlement with talukhdar—Claim to sub-settlement.**

Where, at the date of Lord Canning's confiscation proclamation of 1858, an estate in Oudh was in the plaintiff's possession as mortgagee "with *birt* zamindari rights" under a conditional deed of sale and was subsequently, the plaintiff being dispossessed, re-settled with the defendant as talukhdar, it was held, in a suit by the plaintiff in 1870 for possession as mortgagee, that the mortgage created only a subordinate zamindari interest and that the plaintiff's claim to a sub-settlement was valid. 4 C. 839 (P.C.)=6 I.A. 1. C

(8) ***Sanad* conferring proprietary right on talukhdar, not being a trustee—Effect.**

Where there is nothing to show that a talukhdar, holding a *sanad* referred to in Act I of 1869, has by any agreement or by any arrangement or other means, become clothed with any trust as regards the lands included in the *sanad*, the principle of 3 C. 522 and 14 M.I.A. 112 would not apply. No such trust being vested in the talukhdar, he is entitled, as proprietor, to the lands forming the talukhdari estate included in the *sanad*. 17 C. 311 (P.C.)=16 I.A. 183. D

(9) **Oudh talukhdars—Title under *sanad*—Effect of confiscation of 1858 upon previous gift.**

- (a) The *sanad*, which grants a talukhdari estate, confers an absolute title upon the grantee *prima facie*. 17 C. 444 (P.C.)=17 I. A. 54. E
- (b) A gift of villages by a talukhdar to collateral relations, if effectively made in 1850, and whether absolute or only for the maintenance of the donees out of the rents and profits, was rendered by the effect of the confiscation of 1858, inoperative after that event to establish an interest as against the talukhdar holding under a *sanad* comprising the villages. (*Ibid.*) F

1.—“A summary settlement.”

(1) **Summary settlement, object and effect of, on existing rights.**

- (a) The effect of the summary settlement was to give the registered talukhdar, the absolute legal title as against the state and against adverse claimants to the talukhdari; but it did not relieve the talukhdar from any equitable rights to which he might have subjected himself with a view to the completion of the settlement by his own valid agreement. 14 M.I.A. 112 (P.C.). G
- (b) The object of the settlement is clearly set forth by their Lordships as follows:—

“Soon after the annexation, it was suggested that the true and normal proprietorship of the land in Oudh was that ownership by village communities

1.—“A summary settlement”—(Concluded).

which had been discovered or established in the N.W. Provinces, and that the alleged talukhdari and zamindari rights were simply a recent usurpation due to the violence and fraud which had marked the last year of the Oudh monarchy; that at all events many of the individual talukhdars and zamindars had by violence and fraud or the corruption of the Government possessed themselves of other people's estates. The old question, moreover, was further mooted whether a zamindar was really an hereditary landlord or only a Government functionary. The landholders and zamindars were threatened with an universal *quo warranto*. It was to announce the abandonment of this policy, and to quiet men's titles and possessions, that the letter (of the 10th October 1859) was written. It said in substance, we acknowledge the talukhdari tenure—we acknowledge that the tenure does confer an hereditary lordship descendible in fee simple, and we will not allow the existing titles to be disturbed by old dormant claims. At the same time we preserve in like manner, all the rights of your subordinate zamindars and ryots, whose rights and the rights of persons entitled to *seer* and *nanka* you shall respect as we respect yours. For that purpose and to that extent an absolute title was given to the person who was settled with as talukhdar with the fullest powers of alienation, and consequently of binding his right by contract, so that effect may be given to the rights of persons not claiming adversely to the registered title, but claiming, by agreement with him an old estate consistently with that title.” 14 M.I.A. 112 at pp. 126 & 127. H

(2) Settlement as farmer and not as proprietor—Whether amounts to ‘summary settlement.’

- (a) Where the proprietary right in certain villages, which had been settled with W.A. as a farmer, was granted to him by Government, at the regular settlement in reward for his loyal services, and where by reason of this grant his name was entered in list V mentioned in S. 8 of the Act, *held* that the engagements at the summary settlement taken from W.A. as *Mustagir* or farmer, and not as proprietor of certain villages, did not amount to a summary settlement within the meaning of S. 3 of the Act. 1 O.C. Supp. 86. I
- (b) And in the absence of such summary settlement and of a *sanad*, he did not acquire title under S. 3, to the property granted to him in farm or to the property subsequently decreed to him at the regular settlement, and these properties were not his talukhdari estate as that term is defined in S. 2 of the Act. (*Ibid.*) J

2.—“Subject to all the conditions.”

(1) “Conditions”, meaning of.

- (a) The condition referred to in cl. (4) of S. 3 of the Act refer to the conditions of loyalty and good service mentioned in the letter of the 19th October 1859, republished in the first schedule of the Act, and to the other conditions of a similar nature, such as those of surrendering arms, destroying ports, etc., contained in the *sanad*. 5 I.A. 1=1 C. L.R. 318 (P.C.) K
- (b) This section cannot be construed as controlling the positive limitations regarding succession contained in S. 22 of the Act. (*Ibid.*)

2.—“*Subject to all the conditions*”—(Concluded).

(2) Grant of confiscated talukh—Rights of Government—Grant subject to terms upon which it was made.

(a) Where, owing to the confiscation of the Provinces of Oudh, under Lord Canning's Proclamation, a talukh was at the disposal of the Government, it was competent to the Government when making a gift of the talukh to impose upon the recipient of their bounty any terms they pleased, not inconsistent with the law; and the grantee, will in such a case, hold the talukh subject to such limitations as have been thus created. 26 C. 879 (P.C.)=26 I.A. 229=4 C.W.N. 65. See, also, 2 O. C. 199 (P.C.). L-1

(b) Where, in making such a settlement, on one of the descendants of a former proprietor on the application of such person, the Government made a provision for admitting the other co-sharers to their proper rights and the application of the person on whom the estate was settled also recognised the rights of the other co-sharers, but the *sanad* was granted to the applicants alone, *held*, that the *sanad*-holder, taking the estate, as he did, subject to the terms on which the grant was made, held it, as far as the shares of the other co-sharers were concerned, as trustee for them. (*Ibid.*) M

3.—“*And subject also to all such.... held.*”(1) Inheritance of talukhdari estate—*Sanad* recognizing primogeniture—Effects of existing rights of inheritance.

(a) A talukhdari estate which, before and after annexation, was subject to the common Hindu law of Oudh, viz., the *Mitakshara*, was restored, after the general confiscation of 1858, to the family, which received a *sanad* recognising the shares of its members. At the same time a grant was made to the head of the family as talukhdar of two other villages, and to him afterwards in 1861, was issued a primogeniture *sanad* of the above talukhdari estate. *Held* that this *sanad* could not prevail against the family rights of inheritance; and effect was given to family arrangements, with the same result as regards the two villages. 16 C. 397 (P.C.)=16 I.A. 71. N

(b) On the contention that the family, by the effect of the *sanads*, was to have one head and sole manager in the talukhdar, who, being accountable to the junior members for their shares of the profits, was alone to hold the entire estate by primogeniture, *held* that this kind of managership was entirely unknown to the Common Hindu law of Oudh; and that apparently the Oudh Estates Act, 1869, did not contemplate any such thing. At all events, there must be clear arrangements, such as were not found here, to establish and prove its existence. (*Ibid.*) O

(2) Lord Canning's Proclamation—Talukhdari conferred on Hindu widow—*Sanad*, effect of.

(a) Where the property inherited by a Hindu widow was confiscated by the Government under Lord Canning's Proclamation of 1858, *held*, that her interest as widow and that of the reversionary heirs were absolutely destroyed and put an end to by that confiscation. 5 I.A. 1=1 C. L.R. 318 (P.C.). P

3.—“And subject also to all such... held” —(Concluded).

(b) And when the Government regranted by a *sanad*, to her and to her heirs male according to the law of primogeniture, in full proprietary right and title to the estate, *held* that by virtue of S. 3 of the Act by which she must be deemed to have acquired the estate by the *sanad*, her estate was no longer a limited estate of a widow but a full proprietary one. (*Ibid.*) Q

(c) Such estate would be according to the *Mitakshara*, treated as her separate property, and succession to it under sub-section 11 of S. 22 would be regulated accordingly. (*Ibid.*) R

(3) Title conferred by talukhdari *sanad*, effect of—*Dhar-dhura*, custom of—Possession of land by reason of custom of *dhar-dhura*, suit by talukhdar for.

The plaintiff, who was a talukhdar under Act I of 1869, sued the defendant for possession of some land alleging that a sudden change in the course of the river that flowed between his village and that of the defendant in 1899, had transferred the land in suit which was in the defendant's possession to his (plaintiff's) side of the bank, and that by reason of an immemorial custom known as the custom of *Dhar-dhura* (literally : stream boundary), he was entitled to it. The defendant denied the existence of the custom and further pleaded that if such a custom ever prevailed, it was superseded by the talukhdari *sanad* granted to the plaintiff's predecessor and by S. 3 of Act I of 1869.

Held, that the plea of custom was admissible in the case and that there was no reason for treating a title conferred by a talukhdari *sanad* differently from a title acquired in any other manner. 9 O.C. 129. S

4. Every person whose lands the proclamation¹ issued in Oudh in the month of March 1858 by order of the Governor-General of India specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess, in the lands for which such person executed a kabuliya between the first day of April 1858 and the first day of April 1860, the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in section 3; and he shall be deemed to hold the same subject to all the conditions affecting taluqdars which are referred to in the said section, and to be a taluqdar for all the purposes of this Act.

Rights and liabilities of persons named in second schedule.

(Notes).

1.—“Proclamation.”

N.B.—See the proclamation given *in extenso* at the end.

5. Every grantee shall possess the same rights, and be subject to the same conditions in respect of the estate comprised in his grant as a taluqdar possesses and is subject to, under section 3, in respect of his estate.

Saving of certain redemption-suits.

6. Nothing in sections 3, 4 and 5, or in the said orders, or in any sanad, shall be deemed to bar a suit for redemption,

- (a) where the instrument of mortgage was executed on or after the thirteenth day of February, 1844, and fixed no term within which the property comprised therein might be redeemed, or
- (b) where the instrument of mortgage fixed a term within which the property comprised therein might be redeemed, and such term did not expire before the thirteenth day of February, 1856.

7. If a taluqdar or grantee, or any heir or legatee of a taluqdar or Heirlooms. grantee, desire that any elephants, jewels, arms or other articles of moveable property belonging to him shall devolve along with his estate, he shall take an inventory of such articles. Such inventory shall be signed by him and deposited in the office of the Deputy Commissioner of the district wherein such estate or the greater part thereof is situate; and thereupon such of the said articles as shall not have been transferred shall (so far as may be possible) be used and enjoyed by the person who, under or by virtue of this Act, is for the time being in actual possession or in receipt of the rents and profits of the said estate or the greater part thereof, otherwise than as mortgagee or lessee.

III.—*Lists of Taluqdars and Grantees.*

8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely:—

First.—A list of all persons who are to be considered taluqdars within the meaning of this Act;

Second.—A list of the taluqdars whose estates, according to the custom of the family on and before the thirteenth day of February, 1856, ordinarily devolved upon a single heir;

Third.—A list of the taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture¹;

Fourth.—A list of the taluqdars to whom the provisions of section 23 are applicable;

Fifth.—A list of the grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Sixth.—A list of the grantees to whom the provisions of section 23 are applicable.

(Notes).

General.

(1) Construction of section.

- (a) The Court cannot construe Ss. 8 and 10 so as to deprive the successors to the estates of a person who had died before those sections came into operation of rights which they acquired on his death. 7 O.C. 254 = 26 A. 119 = 8 C.W.N. 801 = 31 I.A. 30 (P.C.) = 6 Bom. L.R. 288. T
- (b) Entries of the names of deceased persons in the lists mentioned in S. 8 do not appear to have been contemplated by the Act, but such entries have no doubt been made and they are practically harmless if the names were already in former lists made under the Orders in Council, or if the entries do not alter the previously acquired rights of any one. (*Ibid.*) U
- (c) There is no authority to the position that the entry of the name of a person who died before the Act came into force can divest rights previously acquired on his death. (*Ibid.*) Y
- (d) In this case, the death occurred in 1865, and the successors then acquired their rights under the ordinary Mahomedan Law. The Oudh Estates Act did not come into operation until 1869; and to construe its provisions as altering the succession would be not only unjust but plainly contrary to well-settled legal principles. (*Ibid.*) But see 8 O.C. 45. W

(2) Retrospectivity of Act.

- (a) Retrospective effect could not be given to the Act and the lists prepared under S. 8 thereof, so as to alter a succession which had already been effected under Mahomedan Law. 7 O.C. 254 (P.C.). X
- (b) But where the succession was not under the Mahomedan Law, but under a will which, although contrary to the ordinary rule of that law that a devise cannot be of more than a third of the estate, was still rendered effective under the *sanad*, held that the operation of the Act was not taken out by the fact that the talukdar's name was only entered after her demise. 8 O.C. 45 (7 O.C. 254, D.). Y

(3) Estate entered under List—Descent under S. 22 sub-Sec. 11 of the Act—Impartibility.

Although an estate may have descended under S. 22 sub-sec. (11) of the Act, according to the personal law of the talukdar still, if it had been entered in the list mentioned in this para, the provisions of the Act will apply and the estate will descend as an impartible estate. 23 A. 369 = 28 I.A. 100 (P.C.) (18 C. 111, P.C. R.). Z

(4) Succession to talukdari estate—Intestacy.

Giving full effect to Act I of 1869, the succession to a taluk must be as to an impartible estate in the case of intestacy, whether the estate ordinarily devolved upon a single heir under list 2 of the section or whether the succession was to be regulated by the rule of primogeniture under lists 3 and 5 of the section. 14 C.W.N. 1010 = 12 C.L.J. 303 = 8 M. L.T. 273 = 8 Ind. Cas. 422 (P.C.). A

1.—“By the rule of primogeniture.”

(1) *Sanad* declaring that descent shall be according to primogeniture—Meaning of primogeniture.

- (a) The word “primogeniture” occurring in the *sanad* emanating from British authority conveys the ordinary meaning of the word “primogeniture” in the Law of England; *viz.*, lineal primogeniture. 14 C.W.N. 1010 = 12 C.L.J. 303 = 8 M.L.T. 273 = 8 Ind. Cas. 422 (P.C.). B
- (b) The contest in this case being between two collaterals of the deceased talukdar related to each other as uncle and nephew, *held* that the nephew who according to the rule of primogeniture would be entitled to succeed was the heir. (*Ibid.*) C

(2) Descent of taluk to a single heir—Rule of primogeniture—Applicability of.

- (a) Where a talukdari estate was placed in cl. 2 of S. 8 of Act I of 1869, and not in cl. 3, the estate is one, which, according to the custom of the family, descends to a single heir, but not necessarily by the rule of primogeniture. D
- (b) Where the heir according to lineal primogeniture is more remote in degree from the ancestor than other collaterals, or other persons in the line of heirship, the nearness of degree prevails over the directness of the line, according to the classification under the Act, though if two collaterals or persons in the line of heirship, are equal in degree, there, as the property can only go to one, recourse must be had to the seniority of line to find out which that one is. 20 C. 649 = 20 I.A. 77 (P.C.). E

(3) Talukdar in the second list—Succession—Primogeniture.

Where an Oudh Talukdar's name was entered in the second, but not in the third, of the lists maintained under the Oudh Act of 1869, the estate, although it is to descend to a single heir, is not to be considered as passing according to the rules of lineal primogeniture. 10 C. 511 = 11 I.A. 51 (P.C.). F

(4) Rule of primogeniture—Origin and nature of.

The following observations are worthy of notice as throwing light on the above mentioned point :—

“The rule of primogeniture is nowhere defined in the Indian Statutes. No assistance can be derived from Hindu or Mohammedan Law on the subject. The correspondence between the Chief Commissioner of Oudh and the Government of India, published in Sykes' Compendium, has been referred to as illustrating what the Government contemplated by the expression “rule or law of primogeniture.” The Government of India refused to allow any law of entail to be introduced, as it would interfere with the rights of free alienation which had been conferred on the talukdars. The most that the Governor-General would allow was that in the case of those Talukdars to whom *sanads* had not been already granted, a condition should be entered in the *sanads*, that in the case of intestacy, the succession should follow the rule observed in the families in Oudh which had a *gaddi* and not the rule of partition. The Chief Commissioner then urged that the *gaddi* or law of primogeniture should be declared to be the rule in

1.—“By the rule of primogeniture”—(Concluded).

all considerable landed estates in Oudh. In reply, the Governor-General authorised the Chief Commissioner to call upon every Talukdar in whose family the rule of primogeniture had not prevailed, to declare whether he was desirous that the rule should be applicable to his estate or not, and authorised the issue of fresh *sanads* expressly recognising the rule of primogeniture to such talukdars as desired it, even though the rule of primogeniture then prevailed in their families. These orders were acted upon. The Talukdars were addressed to the effect that if the custom of *gaddi-nashimi*, or descent to a single heir was not in vogue in their family they should nominate their successors. In the circular then issued, it appears to me that the rule of primogeniture and the custom of *gaddi-nashimi* or descent to a single heir, were treated as one and the same thing. Thereupon, the *sanads* were issued in the form of the one in question in the present case. And having regard to all the correspondence to which I have referred above, it appears to me that the “rule of primogeniture” referred to in these *sanads* was nothing but the custom of *gaddi-nashimi* or descent to a single heir which prevailed in some thirty families in Oudh. I do not think that it was ever contemplated to introduce the English Law of primogeniture, whatever that may^e be, whether descent to the eldest male heir through males only, or also through females. In the letter of the Government of India to which I have referred (Sykes, p. 83 para., 2), it was laid down that in the families having a *gaddi* the law of primogeniture will be maintained under the principles of the Civil Code which provides for the recognition of local customs by the Courts. In this view in the case of every family to which a primogeniture *sanad* was given, including that of Maniarpur, it would apparently be necessary to inquire into the customs of families having a *gaddi* in that part of the country and determine the devolution accordingly. It was probably to meet such difficulties that a Bill to settle the succession in respect of certain Talukdars was prepared in 1862, ‘to provide in detail for the manner in which the rule of primogeniture should take effect’ (Sykes, p. 102). The object was to combine the principle of primogeniture with other principles and usages traditional to the country and dear to the people. This still did not become law, but in 1867 another Bill was introduced which afterwards became law as Act I of 1869, and which was said in the statement of objects and reasons to differ in no essential particular from the Bill introduced by Lord Canning in 1862. S. 22 provides in detail for the manner in which the rule of primogeniture should take effect. It was probably intended and expected that this would settle all cases in which a primogeniture *sanad* should be given.” 8 O.C. 45, at pp. 51-53. G

9. When the lists mentioned in section 8 shall have been approved by the Chief Commissioner of Oudh, they shall be published in the *Gazette of India*. After such publication, the first and second of the said lists shall not, except in the manner provided by section 30 or section 31, as the case may be be liable to any alteration in respect of any names entered therein.
- Publication of lists.

If, at any time after the publication of the said lists, it appears to the Governor-General of India in Council that the name of any person has been wrongly omitted from, or wrongly entered in, any of the said lists, the said Governor-General in Council may order the name to be inserted in the proper list, and such name shall be published in the *Gazette of India* in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

10. No persons shall be considered taluqdars or grantees within the meaning of this Act other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists, and shall regard them as conclusive evidence that the persons named therein are such taluqdars or grantees.

None but persons named in lists to be deemed taluqdars or grantees.

(Notes).

General.

(1) Section does not affect rights vested before Act came into force.

This section cannot be construed so as to deprive the successors of the estates of a person who had died before this section came into operation, of right which they acquired on his death. 7 O.C. 254=26 A. 119=8 C.W.N. 801=31 I.A. 30 P.C.=6 Bom.L.R. 238. H

(2) Construction of Act—Protection of beneficial interests.

Notwithstanding the strong language of the Act and, in particular, the enactment in S. 10, the Courts may nevertheless go behind the Act to the extent atleast of recognising trusts, and may give effect to beneficial titles distinct from the statutory title under the Act. 25 A. 476=30 I.A. 209. (3 I.A. 259=26 W.R. 55; 8 I.A. 215, R.). I

(3) Estate declared to be held in trust on behalf of joint family—Effect of Act I of 1869.

(a) If a person had, before the passing of Act I of 1869, and at any time after the date of the summary settlement and *sanad* and after he had thereby acquired the right, which according to the provisions of the third section, he must be deemed to have acquired thereby, expressly declared that he held and would hold the estate in trust for the joint family as joint family estate governed by the *mitakshara*, there can be no doubt that the estate would have been subject to the trust so declared, and it would not have been converted by Act I of 1869 into an estate held by him for his own sole use and benefit discharged from the trust. 6 I.A. 161. J

(b) There can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declaration of the registered talukdar. (*Ibid.*) K

(c) Notwithstanding the summary settlement, the *sanad* and the Act, the registered talukdar could make himself a trustee after the passing of Act I of 1869. (*Ibid.*) L

General—(Concluded).

- (4) Estate in name of one member of joint family—Entry in lists I, III & V under S. 8—Circumstances showing trust—Right of other members to share in the estate.

Where one of the members of a joint Hindu family governed by the *mitakshara*, was entered as talukdar of certain villages under lists I, III & V of Act I of 1869, but where the circumstances showed that such talukdar held the villages only in trust for the joint family, held that the other members of the family were entitled to share therein, notwithstanding the strict provisions of S. 10 of the Act. 1 O.C. Supp. 24. M

IV.—Powers of Taluqdars and Grantees to transfer and bequeath.

11. Subject to the provisions of this Act, and to all the conditions under which the estate was conferred by the British Government, every taluqdar and grantee, and every heir¹ and legatee of a taluqdar and grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right and interest therein, during his lifetime, by sale, exchange, mortgage, lease, or gift, and to bequeath by his will to any person the whole or any portion of such estate, right, and interest.

A married woman may make a bequest under this Act of any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest under this Act if they are able to know what they do by it.

One who is ordinarily insane may make a transfer or bequest under this Act during an interval in which he is of sound mind.

No person can make a transfer or bequest under this Act while he is in such a state of mind, whether from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

A transfer and a will, or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the transferor or testator, is void.

(Notes).

General.

(1) Scope of Section :—

(a) S. 11 gives not only to the original taluqdar, but to every heir and legatee of a taluqdar, power to transfer or to bequeath the estate which is granted to him. 10 C. 792 P.C. = 11 I.A. 135. N

(b) The section is not controlled by the proviso in S. 19 which declares that nothing in that section shall affect wills made before the passing of the Act. (*Ibid.*) Q

General—(Concluded).

- (c) The proviso in S. 19 only applies to the provisions contained in that section itself and not in the Act generally. (*Ibid.*) P
- (d) So, a will made by a taluqdar before the Act could not fix an unalterable mode of descent. (*Ibid.*) Q

(2) Scope of section—Mahomedan Law.

- (a) Under this section every talukdar and grantee is competent, subject to the provisions of the Act and the section, to transfer the whole or any portion of the estate, or of his right and interest therein, during his lifetime, by sale, exchange, mortgage, lease or gift; and to bequeath by will to any person the whole or any portion of such estate, right and interest. 2 O.C. 241. R
- (b) It is not provided in the section or elsewhere in the Act that he can only make such transfers or bequests subject to the provisions of the law to which persons of his tribe and religion are subject. (*Ibid.*) S
- (c) So, where a Mahomedan talukhdhar and grantee within the meaning of S. 2 of the Act, made a gift of a share in a village to his wife "and after her death to her children," held that his power to create by gift *inter vivos* what in English Law is called an estate in remainder, was to be decided with reference to the provisions of the Act, and not the Mahomedan law. (*Ibid.*) T

(3) Documents executed by Indian ladies, interpretation of—Appointment of heir to talukdari estate by Hindu widow—Oudh Estates Act.

- (a) In an answer to an inquiry by executive officers as to who was heir-apparent to the estate, the widow, who had succeeded to her husband's taluk entered in lists 1 and 2 prepared under the Oudh Estates Act, stated in a petition that "she appoints S to be her heir," and that "after her death S shall be proprietor of the estate."

Held, that when it is said 'I make S the owner (or the owner and heir) of my estate after my death,' the only interpretation to be put on the words is that the writer was appointing S to be heir in succession to herself, and not that she was declaring herself a mere trustee for her lifetime of the estate on behalf of S. 2 O.C. 372. U

- (b) In interpreting documents executed by Indian ladies, the most obvious meaning should be put upon them; and they should not be construed so strictly as a document drawn by a trained English Attorney or solicitor. (*Ibid.*) Y

(4) Will of Talukhdar—Rule of election, applicability of.

The doctrine of election does not apply to the Wills of talukhdars made under Act I of 1869. S. C. 222. W

1.—"Heir."

"Heir," significance of—Daughter succeeding to a qualified interest under S. 22 sub-Sec. (11)—Her power of disposal of the entire property.

- (a) The power of an heir to alienate "his estate or his right and interest therein" refers to his estate, if he owned the estate, or his right and interest therein, if he owned less than the estate. 25 A. 476=30 I.A. 209 (P.C.)=5 Bom. L. R. 833. X

1.—“Heir”—(Concluded).

- (b) It is not meant by this section that every heir, whether absolute or qualified, of a talukhdar or grantee (and it would follow, every legatee, however limited his interest) has an absolute power to alienate the whole estate. (*Ibid.*) **Y**
- (c) And it cannot be argued from the definition of “heir” in S. 2 of the Act as a person inheriting the property “otherwise than as a widow” that the legislature intended to confer under S. 11 upon all heirs other than widows, irrespective of the amount of their interest in the talukhdari estate, a power of disposal as regards the entire estate. (*Ibid.*) **Z**
- (d) For in that case, the legislature must be taken to have so departed from the ordinary principles of law as to empower people to alienate what may not belong to them, which we should not do unless very clear language is adopted by the legislature to that effect. (*Ibid.*) **A**
- (e) So, where a woman succeeded to a talukhdari property, as heir of her mother, under sub-section 11 of S. 22 of the Act; *held* that notwithstanding the terms of S. 2 which defines an “heir” as a person who inherits property “otherwise than as a widow” under the Act, and the provisions of S. 11, she had no power of alienation greater than and irrespective of, her interest under the Hindu law. (*Ibid.*) **B**

12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the lifetime of one or more persons living at the decease of the transferee or testator and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong.

Rule against perpetuity.

(Note).

General.

Scope of section.

This section is applicable to gifts *inter vivos* as well as bequests. 2 O.C. 244. **C**

13. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, shall have power to give or bequeath his estate, or any portion thereof, or any interest therein, to any person not being either—

Restriction as to donees and legatees.

(1) a person who, under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would have succeeded ¹ to such estate or to a portion thereof, or to an interest ² therein, if such taluqdar or grantee, heir or legatee, had died intestate ³, or

(2) a younger son of the taluqdar or grantee, heir or legatee, in case the name of such taluqdar or grantee appears in the third or the fifth of the lists mentioned in section 8,

except by an instrument of gifts or a will ⁴ executed ⁵ and attested, not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be, and registered ⁶ within one month from the date of its execution.

(Notes).

1.—“A person who, under....succeeded.”

(1) Scope of exemption in sub-section (1).

(a) Cl. (1) of S. 13 of the Act refers to a person or persons who would in fact have succeeded under the Act or under the personal law if the Act had not been passed. 5 O.C. 345. D

(b) It cannot be said that any person mentioned in S. 22 as a possible heir was intended to be included in the expression “would have succeeded under the provisions of the Act.” (*Ibid.*) E

(c) For, if this latter construction is adopted, then cl. (2) of the section will have to be regarded as a surplusage. (*Ibid.*) F

(2) “Would have succeeded,” meaning of.

As to the meaning of the expression, see 7 O.C. 248 (P.C.) noted under S. 14, *infra*. G

(3) Devise to one who would have been heir-at-law—Registration within one month unnecessary.

A devise of a portion of a taluk made by a talukhdar entered in the second of the lists prepared under S. 8 of the Act, to the person who would have been heir-at-law to the taluk if the Act had not been passed, does not require to be made by a will registered within one month from the date of its execution. S.C. 222. (S.C. 198, D.), H

(4) Devise of taluk to sister's son—Registration of will.

A sister's son of an Oudh talukdar (when there is brother of the taluqdar) is not one of those, who, in the event of the taluqdar's having died intestate, would have succeeded to an interest in his estate within the meaning of the exceptions in S. 13 (1) of the Oudh Estates Act, so as to dispense with the necessity for the registration of a will devising the taluk to such sister's son. 10 C. 976 (P.C.)=11 I. A. 121. I

(5) Will of talukhdar in favour of maintenance holder—Registration necessary.

A will made in favour of maintenance-holder under S. 24 of the Act, does not come within the exemption contained in sub-section 1 of S. 13 of the Act, and it would be of no validity, if unregistered as required by the section. S.C. 198. J

2.—“Or to an interest therein.”

(1) Will in favour of widow—No male heirs—Registration unnecessary.

(a) The framers of the law did not intend to limit the meaning of the term “would have succeeded to an interest in the estate” so strictly as to exclude a widow, even in the presence of male issue, and thereby to render a will executed in her favour inoperative, simply because it was not registered within three months of its execution. 10 C. 482 (P.C.)=11 I. A. 1; But see 10 C. 976 (983). K

(b) Held that a widow entitled to maintenance out of a taluq was to be considered to have an interest in the latter, within the meaning of the section. (*Ibid.*) L

2.—“Or to an interest therein”—(Concluded).

2) Unregistered will giving maintenance to junior widow—Senior widow possessing power to adopt a son—Right of junior widow to claim maintenance under will—Grant of maintenance though different relief claimed.

- (a) Where a talukdhar died childless leaving two widows, and had given by an unregistered will a power to his senior widow to adopt a son, and maintenance to both his widows; *held* that as, if there had been no will, the junior widow would have succeeded to an estate expectant on the determination of the life-estate of the senior, although subject to be defeated by an adoption by the latter, this was an interest bringing her within the meaning of S. 13, para. (1) of the Act; and consequently, that maintenance bequeathed to her by the will was payable, notwithstanding that the will has not been registered. 15 C. 725=15 I.A. 127 (P.C.). M
- (b) *Held* also that maintenance was rightly decreed to the junior widow as she had sued upon the will, although she claimed, not maintenance, but a share in the estate equally with the senior widow, a claim which was however dismissed. (*Ibid.*) N

3.—“Had died intestate.”

“Intestate” meaning of.

- (a) The word “intestate” in S. 13, cl. (1) of the Act, means intestate as to the taluqdari estate; and the use of the word does not exclude from the exception in that sub-section a son adopted under an authority conferred by a taluqdhar’s unregistered will. 16 C. 556 (P.C.)=16 I.A. 53.0
- (b) Where a taluqdhar by his will authorized his senior widow to select and adopt a minor male child of his family to be the owner of the entire *riyasat*, and the power was exercised accordingly; *held* that the adoption could not be impeached either on the ground that the will and consequently the authority to adopt contained therein was not registered, or on the ground that the adopted son was not within the class excepted by cl. 1 of the section, and could not therefore take under an unregistered will. (*Ibid.*) P

4.—“By an instrument of gift or will.”

(1) Oral gift, validity of.

- (a) An oral gift made by a talukdhar in favour of a person who would have succeeded to an interest in the donor’s estate if he had died intestate was held valid. 5 O.C. 345. Q
- (b) But this decision was made without taking into consideration the effect of S. 16 of the Act, which provides that no transfer of any estate or of any portion thereof or any interest therein made by a talukdhar under the Act shall be valid unless made by an instrument in writing, signed by the transferor and attested by two or more witnesses. 9 O.C. 113 (5 O.C. 345, *not F.*). R
- (c) An oral gift was held therefore to be invalid under the Act. (*Ibid.*) S

2) Construction of wills—Intention of testator—Costs.

- (a) When, by acting on one interpretation of the words used, we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of

4.—“By an instrument of gift or will”—(Concluded).

two constructions, we may reasonably and probably adopt that which avoids these anomalies, even though the construction adopted is not the most grammatically accurate. 15 C. 725 (P.C.)=15 I.A. 127. T

- (b) Where a talukhdar died childless leaving two widows, and bequeathed, by an unregistered will, to the “Maharani Sahiba” his entire estate, and gave a power to the same to adopt a son to him; *held*, that, to determine whether the will referred to, in such bequest and power, only to the elder or to both the widows, extrinsic evidence of the testator’s intention was not admissible; but that the true construction was that which would indicate a reasonable and probable intention consistent with his views, as evidenced by his conduct, and his will generally; and that as his views appeared to favour single heirship, and the whole state of things, as well as the language of the will, pointed to the owner of the estate being one, and the donee of the power to adopt being one, the words “Maharani Sahiba” were not here used as a collective term for both widows, but signified only the elder, although when qualified, as they were in another part of the will, they might include both. (*Ibid.*) U

- (c) In this case, costs were ordered to be paid out of the estate, owing to the difficulty of construction having been caused by the testator himself, and also regard being had to the circumstances and position of the parties. (*Ibid.*) Y

5.—“Executed.”

“Execution,” what constitutes.

A presentation of a will and codicil by the testator to a Registering Officer subsequently to their execution for the purpose of having them registered, and an acknowledgment of their execution at the time of such presentation do not constitute a fresh “execution” within the meaning of the section. S.C. 222. W

6.—“Registered.”

(1) “Registered,” meaning of.

See S. 2 *supra* and notes thereunder. X

(2) Registration, place and mode of.

Where an Oudh Talukdhari, a purdanishin, having granted part of her talukdari to her daughter, sent for the Pargana Registrar for having the instrument registered under S. 13, Act I of 1869, and that officer attended at her house for her convenience, took her acknowledgment of the document, recorded the registration and filed a copy of the document in his office, *held*, that this proceeding was a complete and effective registration of the document, and was substantially a registration at the office of the Pargana district. 16 C. 468 (P.C.)=16 I. A. 19. Y

(3) Authority to adopt, if requires registration—Written authority to adopt and writing by which authority is exercised, distinction between.

- (a) The Oudh Estates Act, I of 1869, does not require an authority to adopt a son to be registered. 16 C. 556=16 I.A. 53 (P.C.). Z

6.—“Registered”—(Concluded).

- (b) But a writing by which an authority to adopt a son is exercised, is required to be in writing *and registered*. (*Ibid.*) A
- (c) S. 17 of the Registration Act, III of 1877, which requires authorities to adopt to be registered, expressly excepts authorities conferred by will. (*Ibid.*) B
- (4) **Will—Validity of will—Will of Oudh Talukdar not registered under Oudh Estates Act, section 13—Subsequent addendum executed and duly registered referring to and explaining will.**

Where a will made by an Oudh talukdar was executed on the 29th of April, 1881, but was not registered within one month of its execution under S. 13 of the Oudh estates Act, and on the 26th of April, 1883, an addendum was made to it, in which the will was referred to and explained, and the addendum was then duly executed as a will and registered on the same day, an objection that the original will had not been registered in accordance with S. 13 of the Oudh Estates Act and was therefore invalid, was overruled, and the document was held to be effective as a testamentary instrument whether the addendum was regarded as a codicil or a will. 25 A. 121 (P.C.). C

V.—*Transfers and Bequests.*

14. If any taluqdār or grantee shall heretofore have transferred ¹ or bequeathed, or if any taluqdār or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another Taluqdār or grantee, or to such younger son as is referred to in section 13, clause 2, or to a person who would have succeeded according to the provisions of this Act ² to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator.

(Notes).

General.

Object of Ss. 14 & 15—Rule in 7 O.C. 248 criticised.

- (a) The object of this section and S. 15 was evidently to maintain the operation of the Act in the event of transfers or bequests to other Talukdhars or members of the transferor's or testator's family, and to annul it in the event of transfers or bequests to outsiders. 8 O.C. 45. D
- (b) In submitting the report of the Select Committee, Mr. Strachey in explanation of these sections stated :—“If these sections had been omitted and a Talukhdar to whose family the rule of primogeniture was applicable had sold a patch of land to a *shop-keeper*, the succession to that field would have been for ever governed by the rule of primogeniture, although the succession to all the rest of the owner's landed and other property would be governed by a different rule.”

General—(Concluded).

- (c) But, the result of the ruling in 7 O.C. 248, (P.C.), would be that if a talukhdar entered in lists I & II transfer or bequeath his estate to a younger son, in the presence of an elder one, the estate will be taken out of the operation of the Act, a result which was apparently not contemplated by the framers of the Act. (*Ibid.*) **E**

1.—“Transferred.”**“Transfer,” includes mortgage.**

The word “transfer” includes a mortgage; and the section applies, therefore, not only to absolute transfers but also to transfers by way of mortgages. 1 O.C. Supp. 36. **F**

2.—“A person who would....Act.”**“Would have succeeded,” meaning of.**

- (a) Any person mentioned in S. 22 as a possible heir cannot be said to be “a person who would have succeeded according to the provisions of the Act to the estate of the testator had he died intestate” within the meaning of the section. 7 O.C. 248=26 A. 393=31 I.A. 132=3 Ind. Cas. 359=8 C.W.N. 699=1 A.L.J. 384 (P.C.) (*Reversing* 3 O.C. 120). **G**
- (b) The expression “would have succeeded” must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of the transfer, or, in the case of a gift by will, at the time when the succession opened. (*Ibid.*) **H**
- (c) In short the above expression is equivalent to the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of S. 22 applicable to the particular case. (*Ibid.*) **I**
- (d) P, a talukhdar, who died in 1866, and whose name was entered after his death in lists I & II mentioned in S. 8, made over his estate by will to his younger son B, who died in 1890 intestate, leaving two widows, the appellants, but no male issue. The respondent, the son of B's elder brother, the eldest male lineal descendant, of P, sued the appellants for proprietary possession of the estate on the allegation that on B's death intestate, he came into the property under cl. (6) of S. 22 of the Act. Held that S. 14 did not apply and therefore the respondent was not entitled to succeed to the estate under cl. (6), S. 22 of the Act. (*Ibid.*) **J**

15. If any taluqdar or grantee shall heretofore have transferred or

Transfers and bequests to persons out of line of succession.

bequeathed, or if any taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath, to any person, not being a talukdar or grantee, the whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which

would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a taluqdar or grantee.

(Notes.)

General.

(1) Object of section.

See 8 O.C. 45 noted under S. 14, as to object of the section.

K

(2) Construction of section.

S. 15 must be read in connection with Ss. 13 and 14 of the Act. If a case falls within S. 14, this section can have no application. 7 O.C. 248 = 26 A. 393 = 31 I.A. 132 = 11 Bom. L.R. 516 = 3 Ind. Cas. 359 = 8 C.W.N. 699 = 1 A.L.J. 384 (P.C.).

L

16. No transfer of any estate, or of any portion thereof, or of any interest therein, made by a taluqdar or grantee, or by his heir or legatee, under the provisions of this Act, shall be valid, unless made by an instrument in writing¹, signed by the transferor, and attested by two or more witnesses.

Transfers to be in writing signed and attested.

(Notes.)

1.—“Unless made....writing.”

(1) Oral gift, validity of.

An oral gift was held to be invalid under this section. 9 O.C. 113 (5 O.C. 345, *not F.*).

M

(2) Gift—Oral gift in favour of wife by talukhdar.

(a) All transfers made after the passing of the Act by Talukhdars, subject to the Act, must, in order to be valid, be made under the provisions of the Act. 9 O.C. 113.

N

(b) Therefore, under S. 16, the gift by a talukhdar to his wife should be made in writing as provided by the section. (*Ibid.*)

O

17. If any such transfer be made by gift, the gift shall not be valid, unless within six months after the execution of the instrument of gift, the gift be followed by delivery by the donor, or his representative in interest, of possession of the property comprised therein, nor unless the instrument shall have been registered¹ within one month from the date of its execution.

Further requisites to validity of gifts *inter vivos*.

(Notes.)

General.

(1) Oral gift by talukhdar to his wife.

(a) There is not necessarily any conflict between Ss. 13 and 17 of the Act. 9 O.C. 113.

P

(b) The general effect of Ss. 13, 16 & 17, in the case of gifts is that all gifts in order to be valid must be made in writing, signed by the transferor and attested by two or more witnesses, such writing must be registered

General—(Concluded).

within one month of execution, and the gift must be followed by delivery of possession by the donor or his representative within six months after execution of the document, and that unless the gift is in favour of a person belonging to the classes excepted by cls. (1) and (2) of S. 13, the gift must be executed not less than three months before the death of the donor. (*Ibid.*) (2 O.C. 244 *disapproved*). Q

- (c) In a suit on a mortgage executed in 1896 by the first and second defendants in favour of the plaintiff, their mother (the present appellant) was impleaded as the third defendant, because the mortgaged property was recorded in her name in the revenue registers. The property was part of the estate of a Talukdar who died intestate in 1895. His name was entered in lists I & III prepared under S. 8 of the Act; and therefore under S. 22 of that Act, the elder of the two male defendants was entitled to succeed to his estate. The appellant's case was that the property had been transferred to her by her husband (the talukdar) in 1892 by an oral gift, that she had from that date been in possession of the property and that her sons had no power to mortgage it to the plaintiff.

Held, under the Oudh Estates Act the gift in favour of the appellant was ineffectual and invalid. (*Ibid.*) R

(2) Verbal gift by talukdar, validity of.

- (a) There cannot be a verbal gift of his estate by an Oudh talukdar. 14 C.W.N. 641=7 A.L.J. 274=11 C.L.J. 387=7 M.L.T. 410=M.W.N. (1910), 110=6 Ind. Cas. 279=12 Bom. L.R. 409 (P.C.). S
- (b) Under S. 16 of the Act, a transfer by a talukdar, to be valid must be made by an instrument in writing and attested by two or more witnesses, and S. 17 further requires a deed of gift to be registered within one month of its execution. (*Ibid.*) T
- (c) And S. 18 of the Act cannot be read as implying an exception in the case of a gift to an adopted son. (*Ibid.*) U

1.—“Nor unless the instrument....registered.”

Meaning of section—Gift of absolute interest to vest at future time.

- (a) The meaning of the section is that it is requisite for the validity of a gift, either that possession of the property should be delivered as therein provided, or the gift should be registered as therein provided. 2 O.C. 244. Y
- (b) If the meaning of the section is taken to be that a transfer by gift is not to be deemed valid unless (1) possession is delivered within six months after the execution of the instrument of gift, and (2) the instrument of gift is registered within one month from the date of its execution, then a gift of an interest in expectancy, such as an interest in reversion or remainder, cannot be made, as possession of such interest cannot be delivered. (*Ibid.*) W
- (c) But to place this meaning on it makes it inconsistent with Ss. 11 and 12, from which it appears that interests in expectancy can be gifted, and with S. 13, from the provisions of which it appears that a gift or such an interest, if executed and attested and registered as therein provided, would be a valid gift. (*Ibid.*) X

1.—“Nor unless the instrument....registered”.—(Concluded).

- (d) Further, in that case if the donor's representative in interest refused to give delivery of possession, the gift would be defeated; and it can hardly have been the intention of the legislature to allow the donor's representative in interest to defeat the donor's intention to benefiting the donee. (*Ibid.*) Y
- (e) And also, if the clauses of the section were meant to be conjunctive, “and” would have been a more appropriate word than the words used, viz., “nor unless.” (*Ibid.*) Z
- (f) Therefore, a talukhdar is competent to make a gift during his life-time of any absolute interest in the estate to vest at a future time. (*Ibid.*) But see 9. O.C. 113. A

18. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, shall have power to give his estate, or any portion thereof or interest therein, to religious or charitable uses, except by an instrument of gift executed not less than three months before his death, and subject to the provisions contained in section 17.

Gifts to religious
or charitable uses.

VI.—Testamentary Succession.

19. Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85, and 88 to 98 (both inclusive), of the Indian Succession Act (No. X of 1865), shall apply to all wills and codicils made by any taluqdar or grantee, or by his heir or legatee, under the provisions of this Act, for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein: Provided that marriage shall not revoke any such will or codicil: Provided also that nothing herein contained shall affect wills made before the passing of this Act ¹.

Sections of Succession
Act applied to
wills of taluqdars.

In applying the said sections to wills and codicils made under this Act, all words hereinbefore defined, and occurring in such sections, shall (unless there be something repugnant in the subject or context) be deemed to have the same meaning as this Act has attached to such words respectively.

(Notes).

1.—“Provided also that nothing....Act.”

Scope of proviso.

- (a) The proviso applies only to the provisions contained in this section, and not in the Act generally. 10 C. 792 (P.C.)=11 I.A. 135. B
- (b) So it does not control the provisions of S. 11, which gives a power of alienation *inter vivos* or by will to every talukdar and his heirs and legatees. (*Ibid.*) C
- (c) So a will made by a talukdar before the Act, was held not to fix an unalterable mode of descent. (*Ibid.*) D

20. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, having a child, parent, brother, unmarried sister, or a nephew, being the naturally-born son of a brother of such taluqdar or grantee, heir or legatee, shall have power to bequeath his estate or any part thereof or any interest therein exceeding in amount or value the sum of two thousand rupees to religious or charitable uses, except by a will executed not less than three months before his death, and registered within one month from the date of its execution.

Bequests to religious and charitable uses.

(Notes).

(General).

Will—Necessity for registration.

A subsequent will, which is not registered in accordance with S. 20 of the Act, is invalid as regards the talukdari estates, and so it would not revoke the former will. 18 C. 1=17 I. A. 82 (P.C.). E

VII.—Intestate Succession.

21. In the next following section, unless where there is something repugnant in the context, the words 'son' 'descendants' 'daughter' 'and 'brother,' apply only to *Najib-ul-tarfain*, and the word 'widow' applies only to a woman belonging to the *ahl-ibradari* of her deceased husband.

Special rules of succession to intestate taluqdars and grantees.

22. If any taluqdar or grantee whose name shall be inserted in the second, third, or fifth of the lists mentioned in section 8, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, namely :—

(1)—to the eldest son of such taluqdar or grantee, or legatee, and his male lineal descendants, ¹ subject to the same conditions and in the same manner as the estate was held by the deceased ;

(2)—or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his lifetime, leaving male lineal descendants, then to the eldest and every other son of such eldest son successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid :

(3)—or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his father's lifetime without leaving male lineal descendants, then to the second and every other son of the said taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(4)—or in default of such son or descendants, then to such son (if any) of a daughter of such taluqdar or grantee, heir or legatee, as has been treated by him in all respects as his own son, ² and to the male lineal descendants of such son, subject as aforesaid ;

(5)—or in default of such son or descendants, then to such person as the said taluqdar or grantee, heir or legatee, shall have adopted by a writing executed and attested in manner required in case of a will, and registered, subject as aforesaid ;

(6)—or in default of such adopted son, then to the eldest and every other brother ³ of such taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(7)—or in default of any such brother, then to the widow of the deceased taluqdar or grantee, heir or legatee ; or, if there be more widows than one, to the widow first married to such taluqdar or grantee, heir or legatee, for her lifetime only ;

(8)—and upon the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted by a writing executed and attested in manner required in case of a will, and registered, subject as aforesaid ;

(9)—or on the death of such first-married widow, and in default of a son adopted by her with such consent and in such manner as aforesaid, then to the other widow, if any, of such taluqdar or grantee, heir or legatee, next in order of marriage for her life, and on the death of such other widow, to a son adopted by her with such consent and in such manner as aforesaid ; or in default of such adopted son, then to the other surviving widows according to their respective seniorities as widows, for their respective lives, and on their respective deaths, to the sons so adopted by them respectively and to the male lineal descendants of such sons respectively, subject as aforesaid ;

(10)—or in default of any such widow or of any son so adopted by her, or of any such descendant, then to the male lineal descendants, not being *najib-ul-tarfain*, of such taluqdar or grantee, heir or legatee, successively, according to their respective seniorities and their respective male lineal descendants, whether *najib-ul-tarfain* or not ;

(11)—or in default of any such descendant, then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir or legatee, are subject. ⁴

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section 11.

(Notes).

General.

(1) Section not controlled by S. 3.

The positive limitations contained in S. 22 of the Act are not in any way controlled by the provision in S. 3, *viz.*, that the right acquired by virtue of the talukdari *sanad* should be subject to all the conditions affecting the talukdar contained in the *sanad* under which the estate is held. 5 I. A. 1=1 C.L.R. 318. (P.C.). **F**

(2) *Sanad*, conditions in, how far operative—Statute if supersedes terms in *sanad*.

(a) S. 22 of the Act, in so far as it describes in the first ten of its sub-sections, the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession which might have been set forth in the *sanad*. 14 C.W.N. 1010=12 C.L.J. 303=8 M.L.T. 273=8 Ind. Cas. 422 (P.C.). **G**

(b) But when sub-section 11, a sub-section which comes at the close of the long list of specific stages of prescribed succession sets up the rule that, in default of any one taking under the previous sub-sections there should be preferred "Such persons as would have been—heir or legatee are subject," it is to be taken as meaning nothing else than a general relegation of parties to the situation in which they would have been found apart from the statute. (*Ibid*). **H**

(c) And where that situation is found in the *sanad* itself, cases not covered by the rules of succession mentioned in sub-sections 1 to 10 of S. 22, must be decided with reference to the rights of parties as contained in the *sanad*, which was the original title to the property. (*Ibid*). **I**

(d) Where, therefore, the *sanad* granted to a talukdar whose name was duly entered in lists I & v of S. 8, provided that in case of a holder dying intestate, the estate would "descend to the nearest male heir according to the rule of primogeniture;" held that this declaration and condition in the *sanad* being part of the original title to the property was an essential part of the ordinary law of the talukdar's religion and tribe, which under cl. 11 of S. 22 of the Act is to govern where the rules of descent specifically laid down in the previous portion of that section do not apply. (*Ibid*). **J**

(3) Estate conferred upon female talukdar—Estate of ordinary Hindu widow—Right of transfer and bequest—Succession Act (XXXII of 1871), S. 31.

(a) The estate conferred upon a talukdar, when such talukdar was a Hindu widow must be held to be an estate differing from that of a Hindu widow under ordinary law, inasmuch as it bestowed on her an absolute right of transfer during her life and of bequest at her death. S.C. 10 (Affirmed in 5 I.A. 1 P.C.). **K**

(b) And whenever it is necessary to enforce the provisions of S. 22 of the Act, and there is a failure of all the heirs specified in cls. 1 to 10 of the section, conflicting claims to the succession must, under cl. 11 of the section, be determined by the law by which the Civil Courts are ordinarily bound to decide questions, regarding succession, inheritance, &c., that is, in this Province the ordinary law set forth in S. 31, Act XXXII of 1871, and the persons entitled to succeed must be sought amongst the heirs of the husband and not of the widow. (*Ibid*). **L**

General—(Concluded).

- (c) If it had been intended that an estate for which a Hindu widow was admitted to engage as a talukdar should be held to be her self-acquired property, some specific provision to this effect would have been inserted in Act I of 1869. (*Ibid*). M

(4) Intestate succession—Change of religion—Forfeiture of rights to succession—Act XXI of 1850.

- (a) S. 22 of the Oudh Estates Act contains a complete code of succession *ab intestato*, and the person designated as next heir by that section does not forfeit his inheritance by having changed his religious faith. S.O. 171. N

- (b) Act XXI of 1850, was not first introduced into Oudh by Act XV of 1874, but was in force there since 1856, when the spirit of the Bengal Regulations was declared to be the law of Oudh. (*Ibid*). O

- (c) Where, therefore, a talukdar died intestate in 1880, leaving a widow who had a life-estate in certain villages of the taluka, and where on her death, her creditors took possession of those villages by purchase in Court auction for debts contracted by the widow, and where a brother's son of the deceased talukdar sued to recover possession of those villages by setting aside the sale, *held*, that the fact of the father of the plaintiff having become a convert to the Mahomedan faith in 1843, could not operate as a forfeiture of his rights. (*Ibid*). P

(5) Talukdari succession to answer to enquiry of Government—Declaration as to who should be heir—Effect.

The official enquiries made of talukdars, at an early period of English administration, as to who were to be their successors, were not intended to derogate from the talukdar's rights in their heritable and transferable estates. So, a declaration made in answer to such an enquiry by a sanad-holding talukdar who was entered in lists 1 & 2, as to who should be his heir, does not operate to confer any estate upon the person named, to the prejudice of those who may have a right thereto, according to the law of succession governing the same. 27 C. 344 (P.C.)=26 I.A. 194. Q

1.—“Male lineal descendants.”

“Male lineal descendants,” meaning of.

- (a) The expression—, is intended to include the descendants of a son dying in his father's lifetime; and this is apparent from sub-section (4), *i.e.*, “or in default of such son or descendants, then to such son of a daughter as has been treated by a talukdar in all respects as his own son and to the male lineal descendants of such son.” The estate is to go to the daughter's son only in default of male lineal descendants of a second or third son. 18 C. 1=17 I.A. 82 (P.C.) R

- (b) In sub-section 4, male lineal descendants of a daughter's son must have the same meaning as in sub-section 3, for by sub-section 5, the estate is to descend to a person adopted by a talukdar only in default of such son or descendants, *viz.*, a daughter's son or his male lineal descendants. (*Ibid*). S

1.—“Male lineal descendants”—(Concluded).

- (c) The sixth sub-section says, in default of an adopted son the estate is to descend to the eldest and every other brother of the Talukdar successively according to their respective seniority and their respective male lineal descendants. The words here should be held to have the same meaning as they have in sub-sections in 3 & 4. (*Ibid*). T
- (d) In sub-section 7, the words are “in default of any such brother” to the widow, omitting “descendants” but it was not intended by this omission to postpone the succession of male lineal descendants of brothers who died in the talukdar's life-time till after the persons mentioned in sub-sections 7, 8, 9 and 10 and only to allow such male lineal descendants to succeed under sub-section 11 according to the ordinary law to which the talukdar is subject. It is the reasonable construction that the brothers were intended to take in the same manner as sons. (*Ibid*). U

2.—“In all respects as his own son.”

(1) “In all respects as a son,” meaning of.

- (a) The clause must be construed irrespectively of the spiritual and legal consequences of an adoption under the Hindu law. 3 C. 626 (P.C.) = 1 C.L.R. 113 = 4 I.A. 228. Y
- (b) The Legislature, in passing the clause in question, did not intend to point to the practice (almost, if not wholly absolute) of constituting in the person of a daughter's son a “putrica putra” or the son of an appointed daughter. (*Ibid*). W
- (c) This is also evident from the fact that this clause, like every other clause of the section, applies to all the talukdars whose names are included in the 2nd or 3rd lists prepared under the Act, whether they are Hindus, Mahomedans or of any other religion; and it is not until all the heirs defined by the ten first clauses are exhausted, that, under the 11th clause, the person entitled to succeed becomes determinable by the law of his religion and tribe. (*Ibid*). X
- (b) Therefore, taking the whole section together, wherever it is shown by sufficient evidence that a talukdar not having male issue has so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the clause. (*Ibid*). Y

(2) “Treated in all respects as his son” test of.

- (a) Whenever the evidence shows that a daughter's son has been treated by the talukdar in all respects as his own, it is sufficient to bring the case within sub-section (4) of this section. 21 C. 997 = 21 I.A. 163 (P.C.) (3 C. 626 P. C, R.). Z
- (b) This is a question of fact, and must be tried and determined by the same methods as other questions of fact. (*Ibid*). A
- (c) And it is very difficult, if not, impossible, to lay down a test for such a question in terms less wide than those of the Act itself. (*Ibid*). B

2.—“In all respects as his own son”—(Concluded).

- (3) **Descent of talukdari estate—Daughter's son, treated as his own, preferred to widow of talukdar.**

A taluk entered in lists 2 & 3 of S. 8 of the Act, descends to a single heir by primogeniture, falling under the provisions of S. 22 of the Act. Under cl. 4 of that section, a daughter's son who was treated by the talukdar as his own son, is entitled to succeed to his estate in preference to his widow. 21 C. 997 (P.C.) = 21 I. A. 163 (3 C. 626 = 4 I. A. 228, Diss.) C

3.—“Brother.”

- (1) **Brother, if includes brother of the half blood.**

There is nothing in S. 22 or elsewhere in the Act, which indicates that the term “brother” as used in S. 22, only means a brother of the full blood. *Held*, therefore, that a brother of the half-blood was a brother within the meaning of S. 22 cl. (6). 3 O. C. 210; 7 O. C. 248 = 26 A. 393 = 8 C.W.N. 699 = 11 Bom. L.R. 516 = 3 Ind. Cas. 359 = 1 A.L.J. 384 (P.C.) D

- (2) **Applicability of Sub-Section (6) Talukdari estate, suit for possession of—Succession to intestate talukdars and grantees—Admission.**

F.C. owned an estate known as Baragaon. His name was entered in the 1st, 2nd and 5th lists prepared under S. 8, Oudh Estates Act, 1869. The estate granted to him by the British Government was known as Sirsawa. In 1872 he caused the name of his elder son A to be entered in the revenue registers in respect of Sirsawa and that of his younger son W in respect of Baragaon. F.C. died in 1873. From that time to the time he himself died, W was in possession of the Baragaon property. He died in November 1887 leaving a widow, the defendant; and A died in September 1887 leaving a son, the plaintiff in the present suit. The suit was brought for possession of the Baragaon property by right of succession under cl. (6), S. 22, of the Act. In the written statement the defendant admitted, that “W was the owner of the property in dispute” but contested the suit on several grounds.

Held, that the defendant's statement that W was the owner of the property in suit did not amount to an admission on her part that W was the legatee of F.C. *Held* further, that the provisions of S. 22, Oudh Estates Act, are only applicable to a talukdar, or grantee, or the heir or legatee of a Talukdar or grantee and that the plaintiff, having failed to prove that W was the legatee of F. C., his suit, in so far as it was based upon that section, was not maintainable. 3 O.C. 287. E

- (3) **Construction of section—Son of deceased elder brother preferred to younger brother.**

In construing this sub-section, the whole of the sub-sections should be looked at; and under this sub-section brothers are entitled; and the principle of representation, found in the earlier clauses as to sons, must also be understood to apply to brother's sons. 18 C. 1 = 17 I.A. 82 (P.C.) F

(b) *Held*, therefore that the descendants of a deceased elder brother are preferred as heirs to the younger surviving brother. (*Ibid*). G

4.—“*Or in default of any such—subject.*”

(1) Impartible talukdari—Succession—Hindu law.

(a) A talukdari estate, entered in lists 1 & 2 prepared under S. 8 of the Act, descended by S. 22 sub-section (11) of the Act, to a person “who would have been entitled to succeed to the estate under the ordinary law by which persons of the religion and tribe of the talukdhar would have been entitled.” *Held* that an estate which so descended was still subject to the provisions of the Act, and descended as an impartible estate. 28 A. 363 (P.C.) = 28 I.A. 100 (18 C. 111, R.) H

(2) Talukdari estate, descent of.

Where a talukdar estate was entered in the lists, Nos. 1 & 2, prepared under S. 8 of Act I of 1869, it descends, as an impartible estate, according to the rules pointed out in S. 22 of that Act, sub-S. 11 of which lays down that the descent should be to the heir according to Hindu Law. 18 C. 111 = 17 I.A. 173 (P.C.) (5 I.A. 1 F.) I

(3) Whether sub-section includes family custom.

The effect of sub-S. 11, S. 22 of Act I of 1869 is simply to refer the parties to the law which would govern the descent of the property when the special provisions of the Act are exhausted. It clearly includes a family custom, when such a family custom is established. 20 C. 649 = 20 I.A. 77 (P.C.) J

(4) Custom—Proof of—*Wajib-ul-arz*, not referring to suit villages, etc., effect of.

Where, in proof of a custom that females could not succeed in a family to the family estate, a *wajib-ul-arz* was produced, which was not shown to refer to the suit villages or to belong to the family in which the custom was sought to be proved, it was held that such a document was no proof of the custom alleged to be proved. 20 C. 649 = 20 I.A. 77 (P.C.) K

23. Except in the cases provided for by section 22, the succession to

General rule of succession to intestate taluqdars and grantees.

all property left by taluqdars and grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate's tribe and religion are subject. (1)

(Notes).

1—“*The ordinary law . . . subject.*”

Whether “ordinary law” includes family custom.

The expression “the ordinary law to which members of the intestate's tribe and religion are subject” includes any “family custom.” 12 O.C. 304 (P.C.) = 6 A.L.J. 767 = 10 C.L.J. 216 = 13 C.W.N. 1073 = 11 Bom. L.R. 890 (20 I.A. 79, R.) L

VIII.—Maintenance.

24. When any taluqdar or grantee, or his heir or legatee, dies leaving

Maintenance of surviving relatives of taluqdars and grantees.

him surviving such relatives as are hereinafter mentioned, the person for the time being in the possession of his estate of the rents and profits thereof shall be liable to pay to each of such relatives during his or her

life, or for such other period as is hereinafter mentioned, by twelve equal

monthly payments, an annuity in accordance with the custom of the country not exceeding such amount as is hereinafter mentioned : Provided that such relative was at the date of the death of the deceased living together with him : Provided also that such relative is and continues to be without any other adequate means of maintenance.

If any part of such estate shall have been transferred or bequeathed by the deceased, the person for the time being in possession of such part, or of the rents and profits thereof, shall be liable to pay proportionate parts of the said annuities during the continuance thereof respectively.

(Notes).

(General).

Will in favour of maintenance holder—Not exempted from Registration under S. 13 cl. (1).

A will in favour of a maintenance holder under this section, by a talukdar does not come within the exemption contained in sub-section 1 of S. 13 of the Act ; and would be invalid, if unregistered. S.C. 198. M

25. In the case of the grand-parents, parents, and senior widows of the deceased, the maximum amount of the annuity shall be as follows :—

- (a) where the annual revenue payable to Government in respect of the estate is or exceeds 1,50,000 rupees—a sum not exceeding 6000 rupees :
- (b) where such revenue is or exceeds 1,00,000 rupees, but is less than 1,50,000 rupees—a sum not exceeding 2,400 rupees :
- (c) where such revenue is or exceeds 50,000 rupees, but is less than 1,00,000 rupees—a sum not exceeding 1,200 rupees :
- (d) where such revenue is or exceeds 25,000 rupees, but is less than 50,000 rupees—a sum not exceeding 600 rupees :
- (e) where such revenue is or exceeds 15,000 rupees but is less than 25,000 rupees—a sum not exceeding 360 rupees :
- (f) where such revenue is or exceeds 7,000 rupees, but is less than 15,000 rupees—a sum not exceeding 240 rupees ; and
- (g) where such revenue is less than 7,000 rupees—a sum not exceeding 180 rupees.

In the case of a junior widow of the deceased, the maximum amount of the annuity shall be one-half of the maximum amount to which a senior widow of the deceased would be entitled under the former part of this section.

26. In the case of brothers and minor sons of the deceased, the maximum amount of the annuity shall be a sum not more than 1,200 rupees.

In the case of nephews of the deceased being fatherless minors, the maximum amount of the annuity shall be a sum not more than 600 rupees.

Unmarried daughters, widows of sons and brothers, and inferior widows.

27. In the case of unmarried daughters of the deceased, widows of his sons and brothers, and his widows not of his *ahl-i-bradari*, the maximum amount of the annuity shall be a sum not more than 360 rupees.

Continuance of annuities.

28. Subject to the provisions hereinbefore contained, the said annuities shall continue—

- (a) in the case of a minor son or a minor nephew, till he ceases to be a minor;
- (b) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance; and
- (c) in all other cases, till the annuitant dies.

(Notes).

General.

Section has no retrospective effect.

S. 28 of Act I of 1869 has no retrospective effect, but merely provides for the annuities to be made for the relatives of talukhdars and grantees who might die, and does not affect awards already made and decreed under S. 33 of the Act. S.C. 42. N

IX.—Miscellaneous.

29. Every Muhammadan taluqdar, grantee, heir, or legatee, and every widow of a Muhammadan taluqdar or grantee, heir or legatee, with the consent in writing of her deceased husband, shall, for the purposes of this Act, have power to adopt a son whenever, if he or she were a Hindu, he or she might adopt a son.

Such power shall be exercisable only by writing executed and attested in manner required by section 19 in case of a will and registered.

30. Any taluqdar or grantee whose name has been entered in the third or fifth of the lists mentioned in section 8, or his heir or legatee, may at any time hereafter, present to the Chief Commissioner of Oudh a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of an instrument of gift, that he is desirous that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 22, and that it shall in future be regulated by the ordinary law to which members of his tribe and religion are subject.

On receiving such declaration, the said Chief Commissioner shall cause to be inserted the name of such taluqdar or grantee, heir or legatee, in the fourth or sixth (as the case may be) of the lists mentioned in

section 8, and shall cause a note thereof to be made in the proper place in the third or fifth (as the case may be) of the said lists, and the succession to such estate shall thenceforward, in case of intestacy, be regulated in the manner provided by section.

31. Any taluqdar or grantee, heir or legatee, may, at any time hereafter, present to the Chief Commissioner of Oudh a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of instruments of gift, that he is desirous that his estate should in future be held subject to the ordinary law of succession to which members of his tribe and religion are subject.

On receiving such declaration, the Chief Commissioner shall cause a note thereof to be made in the proper places in each of the lists mentioned in section 8 in which the name of such taluqdar or grantee, heir or legatee, has been entered, and thenceforward none of the provisions of this Act shall apply to such estate, which shall thenceforward be held subject in all respects to the ordinary law of succession to which members of his tribe and religion are subject.

32. Nothing hereinbefore contained shall affect any right which the creditors of any person making a transfer or bequest under the provisions of this Act would have possessed as against the property comprised in such transfer or bequest if this Act had not been passed.

33. And whereas bodies of taluqdars ¹ have in several cases made awards ² respecting the provision to be made for certain relatives of taluqdars, and it is expedient to render such awards legally enforceable, it is hereby further enacted that every such award shall, if approved by the Financial Commissioner of Oudh, and filed in his Court within six months after the passing of this Act, be enforceable as if a Court of competent jurisdiction had passed judgment according to the award, and a decree had followed upon such judgment.

(Notes).

General.

1.—“Bodies of taluqdars.”

Whether Committee of talukdars a Court—Their decision on question outside their jurisdiction—Its effect as *res judicata*.

(a) A Committee of talukhdars is not in any sense a Court, much less a Court with such jurisdiction as is described in S. 13 of the C.P.C., 1882, as essential to found an estoppel by *res judicata*. 9 Bom. L.R. 757 (P.C.)=6 C.L.J. 13=11 C.W.N. 841. O

(b) Where that Committee had no jurisdiction to decide the question of adoption, their decision based on their conclusion as to that point, refusing to award maintenance, has no judicial validity, although the same may have been affirmed by the Financial Commissioner. (*Ibid.*)

2.—“Awards.”

- (1) Estate of sanad-holding talukdhars—Lineal primogeniture by custom, proof of—Award under S. 33, in dispute between ancestors of present parties.

Where the question was whether the talukdhari estate devolved upon a single heir by a custom of lineal primogeniture, *held*, that an award made several years ago by a body of talukdhars as arbitrators within this section, between the members of the family other than the present disputants, was admissible as evidence of what the custom was as to the evolution of the estate. (6 C. 81 P.C.=25 I.A. 161=2 C.W.N. 737). Q

- (2) Suit for possession of *Guzara* land—Estate for life—Grant for maintenance in perpetuity, how to be construed—Award by British Indian Association.

Case in which it was held that certain orders of the British Indian Association did not amount to an award under the section. 7 O.C. 90. R

SCHEDULES.

FIRST SCHEDULE.

(See section 3).

I.

From C. BEADON, Esq., *Secretary to the Government of India, Foreign Department*, to C.J. WINGFIELD, Esq., *Chief Commissioner of Oudh*—
(No. 6268, dated 10th October, 1859).

I AM directed by the Governor-General in Council
to acknowledge the receipt of your Secretary's letters
noted in the margin, relative to the taluqdar settlement
of Oudh.

2. His Excellency in Council, agreeing with you as to the expediency of removing all doubts as to the intention of the Government to maintain the taluqdars in possession of the taluqas for which they have been permitted to engage, is pleased to declare that every taluqdar with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa.

3. This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zemindars and village-occupants from extortion, and of upholding their rights in the soil in subordination to the taluqdars.

4. The Governor-General in Council desires that you will have ready, by His Excellency's arrival at Lakhnau, a list of the taluqdars upon whom a permanent proprietary right has now been conferred; and that you will prepare sanads to be issued to these taluqdars at that time. The sanads will be given by, and will run in the name of, the Chief Commissioner, acting under the authority of the Governor-General.

5. I am directed to add that, as regards zemindars and others, not being taluqdars, with whom a summary settlement has been made, the orders conveyed in the Limitation Circular, No. 31 of the 28th of January, 1859, must not be strictly observed. Opportunity must be allowed at the next settlement to all disappointed claimants to bring forward their claims, and all such claims must be heard and disposed of in the usual manner.

II.

From C. BEADON Esq., Secretary to the Government of India, Foreign Department, with the Governor-General, to Chief Commissioner, Oudh—(No. 23 dated 19th October, 1859).

I AM directed by his Excellency the Governor-General to acknowledge the receipt of your demi-official letter of the 15th instant, enclosing a form of sanad to be given to the taluqdars of Oudh, granting them a full and permanent proprietary right in the taluqas for which they have severally been permitted to engage at the summary settlement.

2. This form of sanad is generally approved, and a revised copy, with some few alterations, is herewith enclosed for adoption and for careful translation into the Hindustani language, in which the sanads will be prepared.

3. The sanads declare that while, on the one hand, the Government has conferred on the taluqdars and on their heirs for ever the full proprietary right in their respective estates, subject only to the payment of the annual revenue that may be imposed from time to time, and to certain conditions of loyalty and good service, on the other hand, all persons holding an interest in the land under the taluqdars will be secured in the possession of the subordinate rights which they have heretofore enjoyed.

4. The meaning of this is that, when a regular settlement of the province is made, wherever it is found that zamindars or other persons have held an interest in the soil intermediate between the raiyat and the taluqdar, the amount or proportion payable by the intermediate holder to the taluqdar and the net jama finally payable by the taluqdar to the Government will be fixed and recorded after careful and detailed survey and inquiry into each case, and will remain unchanged during the currency of the settlement, the taluqdar being, of course, free to improve his income and the value of his property by the reclamation of waste-lands (unless in cases where usage has given the liberty of reclamation to the zamindar), and by other measures of which he will receive the full benefit at the end of the settlement. Where leases (pattas) are given to the subordinate zamindars, they will be given by the taluqdar, not by the Government.

5. This being the position in which the taluqdars will be placed, they cannot, with any show of reason, complain if the Government takes effectual steps to re-establish and maintain in subordination to them the former rights, as those existed in 1855, of other persons whose connexion

with the soil is in many cases more intimate and more ancient than theirs; and it is obvious that the only effectual protection which the Government can extend to these inferior holders, is to define and record their rights, and to limit the demand of the taluqdar as against such person during the currency of the settlement to the amount fixed by the Government as the basis of its own revenue-demand.

6. What the duration of the settlement shall be, and what proportion of the rent shall be allowed in each case to zamindars and taluqdars, are questions to be determined at the time of settlement.

The Governor-General agrees in your observation that it is a bad principle to create two classes of recognized proprietors in one estate, and it is likely to lead to the alienation of a larger proportion of the land-revenue than if there were only one such class. But whilst the taluqdari tenure, notwithstanding this drawback, is about to be recognized and re-established, because it is consonant with the feelings and traditions of the whole people of Oudh, the zamindari tenure intermediate between the tenures of the taluqdar and the raiyat is not a new creation, and it is a tenure which, in the opinion of the Governor-General, must be protected.

SECOND SCHEDULE.

(See section 4.)

- (1) Dig-Bijay Singh, Raja of Balrampur.
- (2) Rao Hardeo Bakhsh Singh of Katiari.
- (3) Kashi Parshad, Taluqdar of Sissendi.
- (4) Jhabba Singh, Zamindar of Goral Khera.
- (5) Chandan Lal, Zamindar of Moraon (Baiswara).

Lord Canning's Proclamation of 15th March, 1858.

The Army of His Excellency the Commander-in-Chief is in possession of Lucknow, and the city lies at the mercy of the British Government, whose authority it has for nine months rebelliously defied and resisted.

This resistance, begun by a mutinous soldiery, has found support from the inhabitants of the city and of the Province of Oudh at large. Many who owed their prosperity to the British Government, as well as those who believed themselves aggrieved by it, have joined in this bad cause, and have ranged themselves with the enemies of the State.

They have been guilty of a great crime, and have subjected themselves to a just retribution.

The capital of their country is now once more in the hands of the British troops.

From this day it will be held by force which nothing can withstand, and the authority of the Government will be carried into every corner of the province.

The time, then, has come at which the Right Hon'ble the Governor-General of India deems it right to make known the mode in which the British Government will deal with the talukdars, chiefs, landholders, of Oudh, and their followers.

The first care of the Governor-General will be to reward those who have been steadfast in their allegiance at a time when the authority of the Government was partially overborne, and who have proved this by the support and assistance which they have given to British officers.

Therefore, the Right Hon'ble the Governor-General hereby declares, that Drig Bejay Singh, Rajah of Balrampur, Kulwant Singh, Rajah of Pudnaba, Rao Hurdeo Bux Singh, of Katiari, Kashi Prasad, Talukdar of Sissendi, Jhabbar Singh, Zemindar of Gopal Khera, and Chandan Lal, Zamindar Moraon (Baiswara), are henceforward the sole hereditary proprietors of the land which they held when Oudh came under British rule, subject only to such moderate assessment as may be imposed upon them, and that these loyal men will be further rewarded in such manner and to such extent as, upon consideration of their merits and their position, the Governor-General shall determine.

A proportionate measure of reward and honour, according to their deserts will be conferred upon others in whose favour like claims may be established to the satisfaction of the Government.

The Governor-General further proclaims to the people of Oudh, that, with the above mentioned exceptions, the proprietary right in the soil of the province is confiscated to the British Government, which will dispose of that right in such manner as to it may seem fitting.

To those talukdars, chiefs, landholders, with their followers, who shall make immediate submission to the Chief Commissioner of Oudh, surrendering their arms, and obeying his orders, the Right Hon'ble the Governor General promises that their lives and honour shall be safe, provided that their hands are not stained with English blood murderously shed. But as regards any further indulgence which may be extended to them, and the condition in which they may hereafter be placed they must know themselves upon the justice and mercy of the British Government.

To those amongst them who shall promptly come forward and give to the Chief Commissioner their support in the restoration of peace and order, this indulgence will be large, and the Governor-General will be ready to view liberally the claims which they may thus acquire to a restitution of their former rights.

As participation in the murder of English men or English women will exclude those who are guilty of it from all mercy, so will those who have protected English lives be specially entitled to consideration and leniency.

Passed by the Governor-General of India in Council.

(Received the assent of the Governor-General on the 12th June, 1885).

An Act to amend the Oudh Estates Act, 1869.

WHEREAS it is expedient to amend the Oudh Estates Act, 1869; It I of 1869. is hereby enacted as follows:—

1. Subject to the saving in section 2 of this Act, for the definition of
- Amendment of definition of "registered" in section 2 of Act 1 of 1869.
- "registered in section 2 of the said Act there shall be deemed to have been substituted from the date of the passing of the said Act of the following" definition, namely:—

"Registered." 'Registered' means—

- (a) in the case of a Will, registered according to the law for the time being in force relating to the registration of assurances, or deposited with a Registrar according to the Law for the time being in force relating to the deposit of wills; and
- (b) in the case of any other instrument, registered according to the law for the time in force, relating to the registration of assurances."

Saving of certain wills,

2. Nothing in section 1 shall affect any will—

- (a) declared by a judicial decision pronounced before passing of this Act to be invalid on the ground that it was not registered in accordance with the provisions of the said Act, or
- (b) of which the validity is at the time of the passing of this Act being questioned on that ground in a suit commenced before the twenty-third day of October, 1884.

OUDH ESTATES ACT, 1869.

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THE
ADMINISTRATOR GENERAL'S
ACT, 1874

(ACT II OF 1874)

(WITH THE CASE-LAW THEREON)

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ADMINISTRATOR GENERAL'S ACT, 1874.

(ACT II OF 1874.)

[Passed on the 10th February, 1874.]

An Act to consolidate and amend the law relating to the office and duties of Administrator General.

WHEREAS it is expedient to consolidate¹ and amend the law relating to the office and duties of Administrator General ; It is hereby enacted as follows :—

Preamble.

(Notes).

1.—“ *Whereas it is expedient to consolidate.*”

(1) Object of consolidating Statute.

The very object of consolidating a Statute is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act is passed. 22 C. 788, (P.C.)=22 I.A. 107. **A**

(2) Interpretation of consolidating statute.

In dealing with a consolidating statute, it is not required that each enactment must be traced to its original source, nor, when that is discovered, must it be construed according to the state of circumstances which existed when it first became law. 22 C. 788 (P.C.)=22 I.A. 107. **B**

(3) Interpretation of Act—Proceedings of Legislature.

It is not competent for Courts to refer to proceedings of the Legislature as legitimate aids to the construction of law. The same reasons which exclude these considerations when the clauses of an act of British Legislature are under construction, are equally cogent in the case of an Indian Statute. 22 C. 788 (P.C.)=22 I.A. 107. **C**

PART I.

PRELIMINARY.

Short title. 1. This Act may be called the Administrator General's Act, 1874 :

Local extent. It extends to the whole of British India and, so far as regards British subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty ; And it shall come into force at once.

(Notes).

General.

(1) Statement of Objects and Reasons.

For _____, see Gazette of India, 1872, Pt. V, p. 128. D

N.B.—The Administrators General and Official Trustees Act, (V of 1902), should be read with, and taken as amending, this Act; see Act V of 1902, S. 10.

(2) Discussion in Council.

For _____ Council, see Gazette, of India 1871, Supplement, p. 1640; *ibid.* 1872, Supplement, p. 175; *ibid.* Extra Supplement, dated 20th Sept. 1873, p. 16; *ibid.*, 1874, Supplement, p. 101, and Extra Supplement, dated 17th February, 1874, p. 15. E

(3) Act where declared in force.

Act II of 1874 has been declared in force,

- (i) in British Baluchistan, see the British Baluchistan Laws Regulation (I of 1890), S. 3, Bal. Code;
- (ii) in the Santhal Parganas, see Santhal Parganas Settlement Regulation (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation (III of 1899), S. 3, Ben. Code;
- (iii) in the Hill District of Arakan, see the Arakan Hill District Laws Regulation (IX of 1874), S. 3, Bur. Code;
- (iv) in Angul and the Khondmals, see the Angul District Regulation (I of 1894), S. 3.
- (v) The Act has been declared, under S. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely:—
the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and Kolhan in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga then included the Palaman District, separated in 1894; Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44.
- (vi) The Act has been extended, under S. 5 of the same Act, to the North-Western Provinces Tarai, see Gazette of India, 1876, Pt. I, p. 505.
- (vii) The Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act (XIII of 1898), S. 4 (1) and Sch. I, Bur. Code.
- (viii) It has also been extended to the Shan States, see S. 4 and Schedule to the Shan States Laws and Criminal Justice order, 1895, printed, Burma Gazette, 1895, Pt. I, p. 262. F

2. Act No. XXIV of 1867 (to consolidate and amend the law relating to the office and duties of Administrator General) and

Commencement
Repeal of Acts.

Act No. XIX of 1869 (to facilitate administration to the estates of deceased British Subjects in the Hyderabad Assigned Districts) and Act No. V of 1870 (so far as it relates to the Administrator General) are hereby repealed.

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act.

Interpretation
clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“ Presidency of Bengal.”

“ Presidency of Bengal ” ¹ includes —

- (a) the territories for the time being respectively under the Governments of the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab;
- (b) the territories for the time being respectively under the administrations of the Chief Commissioners of Oudh, the Central Provinces, Burma, ² Ajmere and Merwara, Assam and the Andaman and Nicobar Islands;
- (c) such of the dominions of Princes and States aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct: ⁴

“ Presidency of Madras.”

“ Presidency of Madras ” includes—

- (a) the territories for the time being under the Government of the Governor of Fort St. George in Council;
- (b) such of the dominions aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct; ⁴
- (c) Coorg;
- (d) Mysore;

“ Presidency of Bombay.”

“ Presidency of Bombay ” means—

- (a) the territories for the time being under the Government of the Governor of Bombay in Council and under the administration of the Chief Commissioner of British Baluchistan; ³
- (b) such of the dominions aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, from time to time direct; ⁴
- (c) the Hyderabad Assigned Districts:

“ Presidency-town.”

“ Presidency-town ” means the town of Calcutta, Madras or Bombay, as the case may be:

“ Government ” means the Governor General in Council, so far as the Act relates to the Presidency of Bengal; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras; and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to the Presidency of Bombay:

- "Letters of Administration." "letters of administration" shall include⁵ any letters of administration, whether general or limited, or with a will annexed, and letters *ad colligenda bona* :
- "next of kin"⁶ includes a widower or widow of a deceased person, or any other person who by law and according to the practice of the Courts, would be entitled to letters of administration in preference to a creditor or legatee of the deceased :
- "Officer." "officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army :
- "soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a non-commissioned officer :
- "Soldier."
- "Assets." "assets" includes immoveable as well as moveable property.

(Notes).

1.—"Presidency of Bengal."

N.B.—For power to divide the "Presidency of Bengal" into Provinces, see S. 68, *infra*.

2.—"Burma."

N.B.—"Burma" was substituted for "British Burma" in this section by the Indian Succession Law Amendment Act (II of 1890), S. 10.

3.—"And under the administration of the Chief Commissioner of British Baluchistan,"

N.B.—These words were added by S. 10 of Act II of 1890.

4.—"Such of the dominions, etc."

(1) Native States included within the Presidencies for purposes of the Administrator-General's Act (II of 1874).

No. 101-F. (Judicial), dated the 19th July, 1878.—In exercise of the power conferred by S. 3 of Act II of 1874 (the Administrator-General's Act), the Governor General in Council is pleased to direct that the dominions of Princes and States in India in alliance with Her Majesty shall, for the purposes of the said Act, be included in the Presidencies of Bengal, Madras, and Bombay, respectively as follows :—

(i) In the Presidency of Bengal.

Cooch Behar.	Kalahandi.	Bonai.
Hill Tipperah.	Sonepur.	Sirguja.
Manipur.	Bamra, and Rehrakhol.	Jashpur.
The States in the Jynteah and Cossyah hills.	The Tributary Mehals of Cuttack.	Chang, Bhakar.
The (Political States) of Chota Nagpur.	The following Tributary and Feudatory States.	Udaipur.
The Feudatory States of Patna.	Gangpur.	Korea.

4.—“*Such of the dominions, etc.*”—(Continued).

Rampur.	Loharu.	Tank, with the exception
Tehri (Gharwal).	Mailong.	of Pirawa, Nibhera and
		Seronge.
Baghal.	Maler Kotla.	Ulwar.
Baghat.	Mandi.	The Merwara parganas
Bahawalpur.	Mangul.	belonging to Mewar and
		Marwar.
Balsan.	Nabha.	Gwalior.
Bashahr.	Pataudi.	The whole state excepting
Bhajji.	Patiala.	the Sir subahship of
Bija.	Sangri.	Malwa, and certain dis-
Chamba.	Sirmur (Nahan).	tricts under the Sir
		Subah of Isagarh which
		are included in the Presi-
		dency of Bombay.
Darkutti.	Suket.	Bundelkhand and Baghel-
		kand States and Chief
		Ships.
Dahmi.	Taroch.	Ajaigarh.
Dujana.	Bhrutpore.	Alipura.
Faridkot.	Bikanir.	Baoni.
Hindur (Nalagarh).	Boondee.	Baraunda.
Jind.	Dholpore.	Bijawar.
Kalsia.	Jodhpore or Marwar.	Bijna.
Kapurthala.	Kerauli.	Charkhari.
Keonthal.	Kishengarh.	Chatarpur.
Kumharsani.	Kotah.	Daia.
Kunhiar.	Lawa.	Dhurwai.
Kuthar.	Shahpura.	Rewah.
Garrauli.	Maihar.	Samtha.
Gaurihar.	Nagode.	Sarila.
Jaso.	Nayagaon.	Sohawal.
Jigni.	Orchha.	Tarason.
Kamta Rajaula.	Pahari Banks.	Tori Fatehpur.
Khaniadhana.	Pahra.	Holkar's district of
Kothi.	Paldeo.	Alampur.
Lughasi.	Panna.	

(ii) *In the Presidency of Madras.*

Banganapalli.	Puddocottah.	Travancore.
Cochin.	Sundur.	The dominions of His
		Highness the Nizam of
		Hyderabad.

(iii) *In the Presidency of Bombay.*

Baroda.	The Satara Jaghirs.	Oodeypore or Mewar.
Cambay.	The Southern Maharatta	Partabgarh.
	States.	
Cutch.	The States in Khandesh.	Siroh.
Janjira.	The States in Kattywar.	The Jhalra Patum districts
		of Gangwar, Gangwar.
Kolhar pur.	The states in the Mahi-	Pach Pahar.
	kanta.	

4.—“*Such of the dominions, etc.*”—(Concluded).

Khairpur in Sind.	The States in Palanpur.	Dag.
Narukote.	The States in the Rewa-	The Tonk districts of—
	kanta.	
	The States in Surat.	Pirawa.
Sawuntwari.	Banswara.	Nibhera.
Savanoor.	Dungarpur.	Seronje.
The Feudatory States in		Gwalior, districts of—
Dhar, the Central Pro-		
vinces.		

Indore, The whole State
Agar, excepting the dis-
trict of.

Bastar.	Alampur.	Amjhera.	With the several
Kanker.	Jaora.	Bag.	parganas subordi-
—	Jabna.	Dikthan.	nate thereto, in-
Kawarda.	Jobat.	Mandsaur.	cluded in the
Khairagarh.	Kathiawara.	Neemuch.	charge of Sindia's
Makrai.	Khilchipur.	Sagor.	Sir Suba of Malwa.
Nandagaon.	Maksudangarh.	Shujaulpur.	
—	Mathwar.	Sonkach.	
Raigarh Bagrah.	Muhammadgarh.	Ujjain and Bhilsa.	
—	Narsingharh.		
Satki.	Rajgarh.	Gang Baroda.	With the several
Sarangarh.	Raipur Ali.	Malhargarh.	parganas subordi-
—	Ratanmal.		nate thereto, which
Barwai.	Rutlam.		form part of the
Barwani.	Sailana.		charge of Sindia's
Bhopal.	The whole State		Sir Subah of
	Sitamaui.		Isagarh.

Dewas.

The States under the Western Malwa Agency.
The States under the Bhil Agency.
The States under the Deputy Bhil Agency.
The States under the Goona Agency.

2. The notification of this Department, No. 91-J., dated 26th May 1874, is hereby cancelled. (See Gazette of India, 1878, Pt. 1, p. 438). See General Statutory Rules and orders, 1907, Vol. I, pp. 844-847. G

(2) **Territories of Khan of Kelat placed under Presidency of Bombay for purposes of Act II of 1874.**

No. 812-E., dated the 19th April, 1890.—In exercise of the powers conferred by section 3 of the Administrator General's Act, II of 1874, and in supersession of Foreign Department Notification No. 510-E., dated the 2nd March, 1887, the Governor General in Council is pleased to direct, in continuation of Foreign Department Notification No. 101-J., dated the 19th July, 1878, that the territories of His Highness the Khan of Kelat and the territories administered by the Agent to the Governor General in Baluchistan as such, as regards British subjects of Her Majesty in those territories, be deemed to be included in the Presidency of Bombay. (See Gazette of India 1890, Pt. I, p. 247). See General Statutory Rules and Orders, 1907, Vol. I, p. 848. H

5.—“*Letters of administration shall include etc.*”

- (1) Letters of administration to administrator-General—Form and extent of grant.

(a) Grants of letters of administration to the Administrator-General are made to him by virtue of Act II of 1874 (The Administrator-General's Act), and are not in any way affected by the provisions of Act XIII of 1875.
4 C. 770=4 C.L. R. 42. I

- (2) The form of grant should be general and unlimited. 4 C. 770=4 C.L.R. 42. J

6. “*Next-of-kin.*”

N. B.—As to the meaning of the term “next-of-kin” see S. 80 of Act X of 1865 (Succession).

PART II.

OF THE OFFICE OF ADMINISTRATOR GENERAL.

4. In each of the Presidencies of Bengal, Madras and Bombay, there shall be an Administrator General.

Designation of the Administrators General in the three Presidencies.

The said Administrators General shall be called respectively the Administrator General of Bengal, the Administrator General of Madras, and the Administrator General of Bombay.

5. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned, respectively; that is to say:—

Appointment, suspension and removal of Administrators General.

the Administrator General of Bengal, by the Governor General in Council:

the Administrator General of Madras, by the Government of Fort St. George: and the Administrator General of Bombay, by the Government of Bombay.

6. Any person hereafter appointed to the office of Administrator General or officiating Administrator General of any of the said Presidencies shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland; but any person now holding such office shall

Qualification of future and continuance of existing incumbents.

continue to hold the same, subject to the provisions contained in the other sections of this Act.

Administrator General not an officer of High Court.

7. The Administrator General¹ shall not be deemed in that capacity to be an officer of any High Court.

(Notes).

1.—“*Administrator General.*”

Administrator General's office is one of trust.

The Administrator General is a trustee of the estate of the deceased for his creditors, and, after payment of their claims, for the next of kin, in the same manner as the Official Assignee is a trustee for the creditors of an insolvent; and of the surplus, if any, for the insolvent himself.

8 B. H. C. (O.C.J.) 140 (144).

K

8. All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in virtue of his office shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator General.

9. No person now holding the office of Administrator General, or hereafter to be appointed to such office in any of the said Presidencies, shall hold the office of Ecclesiastical Registrar; nor, without the express sanction of Government, any other office together with that of Administrator General:

Administrator General not to hold any other office without sanction of Government.

Provided that the Administrator General of the Presidency may be appointed Official Trustee under Act No. XVII of 1864 (*to constitute an Office of Official Trustee*).

(Note).

N. B.—The second proviso to this section was repealed by the Administrators General and Official Trustees Act, (V of 1902), S. 4 (1). The proviso was as follows: "Provided also that the administrator General of Bengal may hold the office of Receiver of the High Court of Judicature at Fort William."

10. It is hereby declared to be an offence punishable in manner provided by section 168 of the Indian Penal Code, for any Administrator General to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as appears to him to be expedient for the due management of the estates which come into his charge under the provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be construed to alter the civil liabilities of the Administrator General as trustee of such estates.

(Note).

N. B.—As regards the Civil liability under Act V of 1902, the Government are made by that Act responsible for the Administrators' General of Calcutta and Bombay. See S. 3 of Act V of 1902.

11. Unless the Governor General in Council, or the Government, with the sanction of the Governor General in Council, otherwise orders, every Administrator General hereafter to be appointed shall give security to the Secretary of State for India, for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or

Security to be given by Administrator General.

XLV of 1860.

Penalty for trading.

Exception.

for separate sums amounting together to one lakh of rupees, by the deposit of Government Securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds :

Provided that every Administrator General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it :
 and every Administrator General may, with the consent of Government, and shall from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come.

(Note).

N.B.—This section is not repealed by Act V of 1902, as the provisions thereof are still applicable to the Administrator General of Madras.

12. No Administrator General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him in virtue of his office.

No Administrator General shall be required to verify ¹ otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true shall be deemed to have intentionally given false evidence in a state of a judicial proceeding.

(Notes).

1.—“Required to verify, etc.”

(1) Administrator-General need not verify otherwise than by his signature.

(a) The Administrator-General as a public officer is exempt from verifying otherwise than by his signature any petition presented by him under Act II of 1874. 26 C. 404=3 C.W.N. 298. (20 C. 879, F). L

(b) The form of affidavit prescribed by Act XI of 1899 indicates that it does not apply to an application of the Administrator General. (*Ibid.*) M

(2) Petition by Administrator General for letters stating value of estate—Prayer for remission of Court fees—Practice as to verification.

On the Administrator-General presenting a petition for letters of Administration, stating that the total value of the estate will not exceed a certain specified amount, and praying for remission of the fees of Court, under rule 697, Belchamber's Rules and order, p. 278, a question having arisen as to the practice for the verification of the value

1.—“*Required to verify, etc.*”—(Concluded).

of the estate when accompanied by a prayer for remission of Court-fees, *held*, that the petition is sufficiently verified by the simple signature of the Administrator General in accordance with S. 12, Administrator General's Act (1874). The effect of the Act is to do away with the requirements of the rule so far as proof of the statement as to assets is concerned. 20 C. 879. N

13. Whenever any person holding the office of Administrator General obtains leave of absence, the Government may appoint some person to officiate as Administrator General, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator General by any law for the time being in force, and he shall be deemed to be Administrator General for the time being under this Act, and shall be liable to give security under section 11 in like manner as if he had been appointed Administrator General.

Appointment of
officiating Adminis-
trator General.

(Notes).

General.

N.B.—See Act V of 1902 which makes provision for the Deputy officiating as the Administrator General.

Leave of Administrator-General.

The leave of the Administrator General and the Deputy Administrator General appointed under Act V of 1902 is regulated by the Civil Service Regulations.

PART III.

OF THE RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR
GENERAL.(a) *Grants of letters of administration and probate to the Administrator General.*

As regards Administrator General, High Court at Presidency-town to be deemed a Court of competent jurisdiction within meaning of Act X of 1865, sections 187 and 190. X of 1865.

14. So far as regards the Administrator General of any of the Presidencies of Bengal, Madras and Bombay, the High Court at the Presidency-town shall be deemed to be a Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.

(Notes).

General.

Rights, duties, and privileges of Administrator-General not to be affected by Hindu Wills Act or Probate and Administration Act.

(a) Nothing contained in the Hindu Wills Act shall affect the rights, duties and privileges of the Administrator General of Bengal, Madras and Bombay, respectively. See S. 5 of the Hindu Wills Act, O

General—(Concluded).

- (b) Nothing contained in the Probate and Administration Act shall affect the rights, duties, and privileges, of the Administrator General of Bengal, Madras or Bombay. See S. 149 of the Probate and Administration Act.

15. Any letters of administration ¹ or letters *ad colligenda bona*, hereafter to ² be granted by the High Court of Judicature at any Presidency-town, shall be granted to the Administrator General of the Presidency, unless they are granted to the next of kin ³ of the deceased.

Administrator General entitled to letters of administration, unless granted to next of kin ³.

The Administrator General of the Presidency shall be deemed by all the Courts in the Presidency to have a right to letters of administration in preference to that of any person merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased.

Administrator General entitled in preference to creditor, non-universal legatee or friend.

(Notes).

1.—“Letters of administration.”

Grant of letters to Administrator General—Form and extent.

- (a) Grants of letters of administration to the Administrator General are made to him by virtue of Act II of 1874, and are unaffected by the provisions of Act XIII of 1875. *Per Garth, C.J.*, in 4 C. 770=4 C.L.R. 42. **Q**
- (b) Such grants must be limited to the particular Province in which they are granted. 4 C. 770=4 C.L.R. 42. **R**
- (c) *Per White, J.*,—Having regard to the provisions of Act II of 1874, the form of a grant of letters of administration to the Administrator General should be general and unlimited. 4 C. 770=4 C.L.R. 42. **S**
- (d) The effect of such a grant is not enlarged by S. 2 of Act XIII of 1875 (Act to amend Succession Act). 4 C. 770=4 C.L.R. 42. **T**

2.—“To.”

The word “to” was inserted by the Repealing and Amending Act, (XII of 1891). **U**

3.—“Shall be granted.....next of kin.”

(1) “Next of kin”—Meaning of the term.

The word—in this section means the nearest of kin absolutely, not the nearest of kin *in India*. *Per Norman J.*, in the Goods of Smallwood, 20th July 1868; see Broughton's Custody and Preservation of Estates of deceased Persons, p. 7. **Y**

N.B.—In the above case the nearest of kin in India was held not to be entitled in priority to the Administrator-General, as there appeared that a father and mother were alive in England. *Ibid.*: Testamentary Succession by Henderson, 3rd edition, 1909, p. 420.

(2) Right of Administrator-General with regard to estate of illegitimate persons dying intestate.

The Administrator General would be entitled to letters of administration to the estate of persons of illegitimate birth, dying intestate. 11 B.L.R. App. 6. **W**

3.—“*Shall be granted....next of kin*”—(Concluded).

N.B.—The following notification in the Gazette of India of the April, 1873, was relied on by Pontifex, J., in the above case :—

Notification No. 2189, Fort William, the 31st March, 1873, Republished, No. 3099. The 15th December 1871—The Governor General in Council is pleased to rule that the effects of illegitimates dying intestate, which have already become escheats to the Government since the Indian Succession Act, 1865, came into operation, as well as those which may hereafter become escheats shall, after deduction of the expenses incurred and the established proportion of the Crown's share, be distributed in conformity with the aforesaid Act.

The following financial despatch from the Right Hon'ble Secretary of State for India, No. 53, dated 12th February, 1873, is published in the *Gazette of India* in continuation of Financial Notification. No. 3099, dated 15th December 1871, *Financial Despatch, No. 53, dated India Office, London, 12th February, 1873, to His Excellency the Right Hon'ble Governor-General of India in Council.*

My Lord,

With reference to your despatch in this Department of 20th December, 1871, No. 345. and 20th December 1872, No. 468, I have to signify my approval of Your proceedings in regard to the estate of the late Mr. P. T. Saunders.

On the general question of dealing with estates of illegitimate persons, I approve of the course suggested by you being followed in all cases where all the parties clearly entitled to consideration are resident in India, but in case where no such claim is established within one year from the date of the escheat, or when the probable claimants are in this country, then the practice of remitting home those estates must be adhered to. See 11 B.L.R. App. 7 (note). X

(3) Administration with will annexed—Act VIII of 1855, S. 17—Pecuniary legatee.

(a) A pecuniary legatee is not entitled to letters of administration with will annexed in preference to a creditor. 1 B.H.C. 103. Y

(b) Hence, he is not entitled, under Ss. 10 and 17 of Act VIII of 1855, to a grant of administration in preference to the Administrator General. (Ibid.) Z

(4) Widow not resident in any zillah—Act XXVII of 1860—Act VIII of 1855, S. 10.

Where a widow, not being resident in any zillah, has not been able to get a certificate under Act XXVII of 1860, letters of administration were, on the consent of the widow, directed to be issued to the Administrator General. Bourke, Test, 6. A

16. If any person, not being a *Native Christain*¹, Hindu, Muhammadan, *Parsi*² or Buddhist, or a person exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the

death or within one year thereafter the value of one thousand rupees within any of the said Presidencies.

X of 1865.

When administrator General is to administer estates of persons other than Hindus etc.

and if no person to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator General of the Presidency in which such assets are, shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency-town letters of administration to the effects of such person, either generally or with a will annexed, as the case may require.

Whenever the Administrator General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 246 of the Indian Succession Act, 1865, states—

X of 1865.

- (a) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief,
- (b) that the deceased left some property within the Presidency as hereinbefore defined, and
- (c) the amount or value of assets which are likely to come into the petitioner's hands.

(Notes).

General.

(1) Scope of section.

This section was held to be no bar to the Administrator General administering estates of less than one thousand Rupees. *Hogg v. Mendietta*, 1 Boul. 622. B

(2) Administrator General, right of, to administer estates of illegitimate persons.

See 11 B.L.R., App. 6 cited under S. 15, *supra*. C

(3) Will made in Bombay—Property worth less than Rs. 1,000—Probate—Administrator-General's certificate.

- (a) A will made in Bombay is subject to the provisions of the Hindu Wills Act, and a person claiming as a legatee under the will is not entitled to sue without taking out probate, as he would be bound by S. 187 of the Indian Succession Act which is incorporated in the Hindu Wills Act. 12 Bom. L.R. 471. D

- (b) But where the property comprised in the will is worth less than Rs. 1,000, and the legatee has obtained a certificate under S. 36 of the Administrator-General's Act to administer the effects of the deceased, such certificate entitles the legatee to receive the property. 12 Bom. L.R. 471. E

- (c) The provision of the Administrator General's Act is not affected by the incorporation in the Hindu Wills Act of S. 187 of the Indian Succession Act. 12 Bom. L.R. 471. F

- (d) Section 5 of the Hindu Wills Act provides that nothing contained in that Act will affect the rights, duties and privileges of the Administrator-General of Bengal, Madras and Bombay respectively. 12 Bom. L.R. 471. G

General—(Concluded).

- (4) "Power of Bengal High Court to grant Letters of administration to attorney of executor of deceased person in respect of assets in Punjab.

The Bengal High Court is not competent under this section to grant letters of administration to the attorney of the executor of a deceased person in respect of assets situate in the Punjab; in such a case letters may be granted to the Administrator General of Bengal. See 1 B.L.R. O.C.J. 3. H

1.—"Native Christian."

The word "Native Christian" were inserted by the Native Christian Administration of Estates Act, (VII of 1901), S. 4. I

2.—"Parsi."

The word "Parsi" in S. 16 was inserted by the Administrator General's Act, (IX of 1881), S. 2. J

Power to direct Administrator General to apply for administration.

17. Whenever any person, whether a *Native Christian* ¹ Hindu, Muhammadan, *Parsi* ² or Buddhist, or not, shall have died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at the Presidency-town, it shall be lawful for the court, upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next of kin or otherwise, or

upon the application of a friend of any minor so interested, or

upon the application of the Administrator General,

if the applicant satisfies the Court that danger is to be apprehended of the misappropriation, deterioration or waste of such assets unless letters of administration of the effects of such person are granted,

to make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the effects of such person :

Administration to effects of Hindus ³, etc., when granted under this section.

Provided that, in the case of an application being made under this section for letters of administration to the effects of a deceased *Native Christian* ¹, Hindu, Muhammadan, *Parsi* ² or Buddhist, or person exempted as aforesaid, the Court may refuse to grant letters of administration

Costs of unnecessary application.

to any person, if it be satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks just.

(Notes).

General.

- (1) Administrator General taking possession without prior order of Court—Conflict between Administrator General and Court of Wards—Nominee of Court of Wards, if can be appointed Administrator.

The Court of Wards, as such, cannot be appointed administrator. There is nothing, however, to prevent the Court, in certain circumstances, (*e.g.*, in this case, where the testator wished the minor's estate to be entrusted to the Court of Wards), from appointing the nominee of the Court of Wards (in most instances the Manager) Administrator of the testator's estate, with the will annexed, under S. 31 of the Probate and Administration Act.

Held, on the facts of this case, that the Administrator General's taking possession of the estate of the testator was illegal. 10 C.W.N. 241. K

- (2) Suits brought before grant of letters of administration against representatives of a deceased Hindu.

(a) Where a Hindu died leaving a widow and no male issue, and two of the creditors of the deceased brought suits against such widow as the legal representative of the deceased, and attached before judgment certain property of the deceased and afterwards obtained judgments against the widow, an application on behalf of the Administrator General, who at the widow's request, but after the judgments were obtained, took out letters of administration to the estate of the deceased, to have such attachments removed, was refused, though the Judge's order, directing that the letters should be issued to the Administrator General, was prior in time to the passing of the judgments; and the judgment-creditors were held entitled to be paid out of the property attached, so far as the same proved sufficient for that purpose. 8 B.H.C. (O.C.J.) 140. L

(b) Order to collect assets—Decree against deceased's estate passed prior to such order—Attachment of part of deceased's estate subsequent to above order—Claim of Administrator General prior to that of attaching creditor. See 23 B. 428 noted under S. 18, *infra*. M

1.—“Native Christian.”

N.B.—The words “Native Christian” were inserted by the Native Christian Administration of Estates Act (VII of 1901), S. 4, not, however, affecting any probate, letters of administration or certificate granted or vested under this Act; see Act VII of 1901. M-1

2.—“Parsi.”

N.B.—The word “Parsi” in Ss. 17 and 18 was inserted by the Administrator General's Act (IX of 1881), S. 2. M-2

3.—“Administration to effects of Hindus, etc.”

- (1) Administration of native estates—Cases decided before passing of Act II of 1874.

(a) Where the deceased is a Hindu on his death, there is not any need of letters of administration for the ascertainment of the person in whom his property should be vested. It would vest immediately upon his death on the person entitled to succeed thereto. 2 Stra. Notes of Cas. 153, cited in 8 B.H.C. 140 (144). N

(b) In granting administrations to native estates the interference of the Court originally proceeded upon the supposition of the consent of the

3.—“Administration to effects of Hindus, etc.”—(Concluded).

parties interested. The practice thus adopted by this Court has been lately recognised by the local Legislature, but it is discretionary with the Court to grant such administration. There is no difference between the case of Mahomedans and Hindus. *In the goods of Shaikh Nathoo*, *Fulton R.* 485, 486; *cited in 8 B.H.C. (O.C.J.)* 140 (144). **O**

- (c) *In the goods of Moonshee Hoosien Ali*, in 1843, *Peal, C.J.*, said “The power of this Court to grant probates and administration in native estates, where there is property within the local jurisdiction, has been lately recognised by the Legislature. The Court has got the power to select the administrator. In Hindu and Mahomedan cases, any party may be appointed by consent of the next-of-kin. The Registrar (predecessor of the Administrator General) would usually be preferred, but he need not, necessarily apply in his official capacity. *Fulton R.* 329, 341; *cited in 8 B.H.C. (O.C.J.)* 140 (145). **P**

- (d) The grant of administration would not conclude the question of the will. A Hindu is not bound to apply for probate. *Per Peal, C.J.*, in *the goods of Sumbhoochunder Mitter*, 1 *Taylor and Bell* 39, 40, *cited in 8 B.H.C. (O.C.J.)* 140 (145). **Q**

- (e) “We have several times been applied to for administration of Hindu and Mahomedan estates on consent of some of the next-of-kin, but have always refused it, as it would be establishing indirectly a compulsory jurisdiction over Hindus and Mahomedans. It can only be done on the consent of all, and then the jurisdiction is founded on their consents. But if done with the consent of some only, it would be an interference with the law of inheritance, by breaking the descent and making one representative, whereas the Hindu Law says all are representatives. Such an interference would be a violation of the Statute (21 Geo. III, c. 70, S. 17) which says that Hindus and Mahomedans are to have their own law of inheritance and succession.” *Per Peal, C.J.*, in 1 *Taylor and Bell* 39, 40, *cited in 8 B.H.C. (O.C.J.)* 140 (145). **R**

(2) Administrator of the estate of a deceased Hindu—Letters of administration granted to Administrator General, whether relates back.

- (a) When ordinary letters of administration to the estate of a deceased Hindu are granted to the Administrator General under Act XXIV of 1867, (but not under S. 17 of this Act), his title does not relate back to the death of the deceased, nor to the date of the Judge's order directing such letters to be issued, but accrues only as from the date of the grant of such letters. *8 B.H.C. (O.C.J.)* 140. **S**

- (b) *Quare*.—Whether, if letters are issued to the Administrator General under S. 17 of this Act, the case would be otherwise, or his powers greater. *8 B.H.C. (O.C.J.)* 140. See also *Testamentary Succession by Henderson*, 3rd Ed., 1909, p. 422. **T**

18. Whenever any person, whether a Native Christian¹, Hindu, Muhammadan, Parsi² or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

Power to enjoin Administrator General to collect and hold assets until right of succession or administration is ascertained.

and such Court is satisfied that danger is to be apprehended of the misappropriation, deterioration or waste of such pro-

perty, before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator General is entitled to letters of administration to such deceased person,

the Court may authorize and enjoin the Administrator General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court, and in default of any such orders or directions according to the provisions of this Act so far as the same are applicable to such property ;

and the Administrator General shall be entitled to a commission of one *per centum* upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made ;

and, in case letters of administration of any such property are afterwards granted to the Administrator General, the said commission of one *per centum* shall be deemed a part-payment of the commission payable to the Administrator General under the letters of administration.

Any order of Court made under the provisions of this section shall entitle the Administrator General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

(Notes).

General.

(1) Scope of order under this section.

An order made under this section, while it is in force, is like probate or letters of administration, so far as respects the title under it to get in the property of the deceased. *Hogg v. Hurry Dass Dutt*, 1 Boul. 654. U

(2) Administrator General holding estate, position of.

(a) The Administrator General holding an estate under S. 18 of the Act is in no better position than a private administrator. 11 C.W.N. 193. Y

(b) Pending grant of letters of administration, he can only make payments for the benefit of or for the preservation of the assets of the estate. (*Ibid.*) W

(c) And he cannot make any payment to the prejudice of the estate. (*Ibid.*) X

(3) Administrator appointed under S. 10 of Reg. VIII of 1827, position of.

An administrator appointed under S. 10 of Regulation VIII of 1827 does not by such appointment become the legal representative of the deceased, or become entitled to continue an appeal filed by him. 21 B. 102. Y

(4) Right of Administrator General under this section.

(a) The Administrator General is not empowered under this section to administer the assets, but is bound to protect the immoveable properties, and any expenses incurred by him in repairing them are to be taken as charges which can be debited to the estate. See in the goods of *Hurry Dass Dutt*, *Rommonney v. Promoney*, Suit No. 912 of 1904, dated 6-2-1905. Z

(b) The Administrator General can apply to the Court for direction if there was any difficulty in the matter of protecting the properties. (*Ibid.*) A

General—(Continued).

- (5) **Order to collect assets—Decree prior to such order—Attachment subsequent to such order—Claim of Administrator General prior to that of attaching creditor.**

(a) On the 16th April, 1898, the plaintiff obtained an *ex parte* decree against the defendant as heir and legal representative of his deceased father. Previously to the date of the decree (*viz.*, on the 4th March, 1898), an order had been made by the High Court under Ss. 17 and 18 of the Administrator General's Act (II of 1874), authorizing the Administrator General to collect the assets of the deceased and ordering him, if necessary, to take out letters of administration to his estate. On the 29th April, 1898, the plaintiff, under S. 268 of the Civil Procedure Code (Act XIV of 1882), attached certain money in the hands of a third party due to the deceased's estate. On the 2nd July, 1898, letters of administration were granted to the Administrator General.

Held that as against the Administrator General, the attachment was void *ab initio*. 23 B. 428. **B**

(b) At the date of the decree obtained by the plaintiff, the Administrator General was entitled, by virtue of the order of the High Court, to take possession of the estate of the deceased. As soon as that order was made, his right to possession became paramount, and excluded that of the defendant (the son of the deceased), who was then no longer entitled to recover payment of debts due to his father. (*Ibid.*) **C**

(c) A decree, therefore, subsequently obtained against the defendant could not, as against the Administrator General, confer any rights on the decree-holder, who could not stand in a better position than the defendant, his judgment-debtor. (*Ibid.*) **D**

(d) Under Ss. 278 and 280 of the Civil Procedure Code, 1882, the Administrator General had the right to have the attachment removed, because he was exclusively entitled, at first by reason of the order under S. 18 of Act II of 1874 and subsequently by his letters of administration, to recover the debt and was not subject to any decree which affected his title. (*Ibid.*) (8 B.H.C. O.C.J. 140, *distinguished.*) **E**

- (6) **Conflicting claims to property in possession of Administrator General under order of Court—Expenses of taking care of such property incurred by Administrator General—Costs.**

The plaintiff and defendants Nos. 2, 3, 4 and 5 were the daughters of one S, who died in Bombay on the 9th November, 1885. Shortly after the death of S, the plaintiff went to Delhi, leaving certain ornaments and other valuables belonging to her locked up in a box, which also contained certain property which had belonged to her mother, S. The box remained in the house in which the plaintiff had resided with S. The key of the box was taken by the plaintiff to Delhi. During the plaintiff's absence, one of her sisters, (defendant No. 3), presented a petition to the High Court, alleging that all the property in the said box belonged to her deceased mother, S, and was in danger of being misappropriated by the plaintiff. Upon these allegations the Court on the 16th January, 1886, made an order, under S. 18 of Act II of 1874, directing the Administrator General to "take possession of property of S., and hold the same, subject to further order of the Court." Pursuant to this order the Administrator General took

General—(Concluded).

possession of the box and all its contents. The plaintiff, admitting that some of the ornaments in the box had belonged to the estate of S., sued to recover the remainder of the ornaments therein, which she alleged belonged to herself, and which she specified in a separate list.

Defendant No. 3 denied her claim, and contended that all the property belonged to the estate of S. The other sisters of the plaintiff (defendants Nos. 2, 4, 5) admitted the plaintiff's claim. The Court *held*, that the plaintiff had proved her claim, and directed that her property should be delivered over to her by the Administrator-General. 10 B. 350. **F**

(b) *Held*, as to costs, that the Administrator-General was in the position of an interpleading plaintiff, and that he was entitled, in the first instance to recover his cost from the losing claimant. (*Ibid.*) **G**

(c) Failing recovery from defendant No. 3, he was entitled to be paid his costs out of the estate of S. and, if, and in so far as, that estate proved insufficient, he was entitled to recover them out of the property which was the subject-matter of the suit. (*Ibid.*) **H**

(d) The costs of the Administrator-General included the expenses incurred by him in taking care of the property entrusted to him by the order of the Court, such expenses to be apportioned according to the amounts respectively belonging to the estate of S. and to the plaintiff, and to be paid accordingly out of the said estate and out of the property of the plaintiff. (*Ibid.*) **I**

1.—“Native Christian.”

The words “Native Christian” were inserted by the Native Christian Administration of Estates Act (VII of 1901), S. 4, not, however, affecting any probate, letters of administration or certificate granted or vested under this Act; see Act VII of 1901. **J**

2.—“Parsi.”

The word “Parsi” in Ss. 17 and 18 was inserted by the Administrator General's Act, 1881 (IX of 1881), S. 2. **K**

Grant of probate to executor appearing in the course of proceedings taken by Administrator General.

19. If in the course of proceedings to obtain letters of administration under the provisions of section 16 or section 17,

any executor appointed by a will of the deceased appears according to the practice of the Court and proves the will and accepts the office of executor,

or if any person appears according to such practice and makes out his claim to letters of administration as next of kin of the deceased, and gives such security as is required of him by law or by the practice of the Court,

Costs of proceedings taken by Administrator General to be paid out of estate.

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

20. If no person appears according to the practice of the Court and

If no executor or next of kin appear or give necessary security, administration to be granted to administrator General.

entitles himself to probate of a will, or to a grant of letters of administration as next of kin of the deceased, or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

the Court shall grant letters of administration to the Administrator General.

(Notes).

General.

(1) Ground for refusing letters of administration—Act VIII of 1855, S. 30.

The statement of a belief by the Administrator General that applicants for probate are about to make charges which S. 30, Act VIII of 1855, prohibits, and thereby renders it illegal for them to "receive or retain," is not a sufficient ground for inducing the Court to refuse letters of administration to applicants otherwise well entitled, and whose application is altogether *dehors* the Administrator General's Act. 1 Ind. Jur. O.S. 139.

L

(2) Possibility of recovery of assets being barred by limitation—Act VIII of 1855.

The bare possibility that the Act of Limitation may ultimately become a bar to the recovery of assets, is not such danger of misappropriation as warrants the granting to the Administrator General of an order under S. 12 of Act VIII of 1855. 1 M.H.C. 234.

M

(3) Debtor not entitled to order under S. 12 of Act VIII of 1855.

A debtor to the estate of a deceased person cannot apply for an order under S. 12 of Act VIII of 1855. 1 M.H.C. 234.

N

21. The Administrator General shall, when duly authorised or

Administrator General in certain cases to secure and distribute the effects of soldiers.

required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees, charging the estate with a commission of three *per centum* only.

It shall not be necessary for the Administrator General to take out

Proviso.

letters of administration in cases referred to in this section: but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters.

22. When the Administrator General applies for letters of administration to the effects of any officer, soldier or other person subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Debts Act, 1863, or any other law for the time being in force relating to the payment of regimental debts and the distribution of the effects of officers dying on service.

Power to grant Administrator General letters limited to purpose of dealing with assets in accordance with Regimental Debts Act.
26 & 27. Vic. C. 57.

Administrator General not precluded from applying for letters within one month after death.

23. Nothing in this Act is intended to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

[23-A.] Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General:

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.

(Notes).

General.

N.B.—This section was inserted by the Administrator General's Act, 1881 (IX of 1881), S. 3.

N-1

24. If any letters of administration granted to the Administrator General under the provisions of this Act be revoked or recalled, the same shall, so far as regards the Administrator General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void:

After revocation, letters granted to Administrator General to be deemed as to him to have been voidable only.

Exception.

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator General or any person acting under his authority in pursuance of such letters, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

(Note).

N.B.—See Notes to Ss. 16 to 20, *supra*.

25. If any letters of administration granted under this Act be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such will annexed, shall be deemed valid notwithstanding such revocation.

(Note).

General.

N.B.—See notes to Ss. 16 to 20, *supra*.

Authority to pay debt barred by limitation.

The Administrator General of Madras if authorised to pay a barred debt. See 1 M. 267. 0

26. If an executor or next of kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establish to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted by virtue of this Act to the Administrator General may be recalled ⁽¹⁾ and revoked, and probate may be granted to such executor, or letters of administration granted to such other person as aforesaid :

Provided that no letters of administration granted to the Administrator General shall be revoked or recalled for the cause aforesaid, except in cases in which a will or codicil of the deceased is proved in the Presidency, unless the application for that purpose be made within six months after the grant to the Administrator General, and the Court be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

(Notes).

1.—“ May be recalled &c.”

Recall of letters of Administration granted to Administrator General—Commission.

When letters of administration which had been granted to the Administrator General of Madras were recalled, and he had merely taken manual possession of cash, Government promissory notes, and the title deeds of leaseholds belonging to the deceased, the High Court, under S. 22 of Act VIII of 1855, allowed him commission at the rate of 2½ per cent. on the cash and the value of the notes, but refused to allow it on the leaseholds. 1 M.H.C. 171. P

27. If any letters of administration granted to the Administrator

Costs of obtaining administration, &c., may, on revocation, be ordered to be paid to Administrator General out of assets.

General in pursuance of this Act be revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any commission¹ which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of any assets belonging to the estate :

Provided that, in any such case, when the deceased has left a will appointing an executor, and probate of the will has been granted by any Court in the Presidency to such executor within three months after the death,

or when the widow or next of kin has, within one month if resident within the Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased,

then and in either of such cases the Administrator General shall (without prejudice to the provisions contained in sections 17 and 18) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration has been granted as last aforesaid.

(Notes).

1.—“ And the whole . . . commission &c.”

Commission payable Administrator General—Collection of debts.

Where there has been only collection, but no distribution of the assets by the Administrator-General, an order under this section allowing commission at a certain rate, ought, in accordance with the rule laid down in S. 54 of the Act, to award only half of the full commission of 5 per cent. 1 M. 148. Q

28. When the Administrator General has given such notices as would

Distribution of assets.

have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims,

be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(Notes).

General.

This section has been substituted by S. 4 of Act IX of 1881, for the original S. 28 of this Act, which was as follows:—

“Whenever the Administrator-General declares a dividend among such creditors of the deceased as have proved their debts, and notifies the payment of such dividend by advertisement in the Official Gazette, no creditor of the deceased who has not previously to such declaration and advertisement proved his debts shall be entitled to participate as such in the assets wherewith such dividend is made.”

“Any payment or delivery of assets to any legatee or to any person entitled to any distribution which is made by an Administrator-General after the expiration of one year from the grant of the Letters of the Administration under which such payment or delivery is made, shall be allowed to the Administrator-General against all creditors and other claimants against the estate, of whose debts or claims he has not had notice before making such payment or delivery.”

“Provided that nothing herein contained shall exempt the person to whom such payment or delivery is made from any liability to refund to which he would otherwise be liable.”

“Provided also, that no notice of any debt or claim shall affect the Administrator-General, unless proceedings to enforce the debt or claim are commenced within one month after the giving of such notice, and are prosecuted without unreasonable delay.”

R

29. All letters of administration granted to any Administrator General in virtue of his office shall be granted to him by his name of office,

Letters to be granted to Administrator General by his name of office. Authority given by such letters.

and all letters of administration heretofore granted to the Ecclesiastical Registrar or Administrator General officially, or granted to any Administrator General in virtue of his office, shall authorize the

Administrator General for the time being of the same Presidency to act as administrator of the estate to which such letters relate.

(Notes).

General.

Probate, Grant of—Act XIII of 1875—Rule 4 of Rules of High Court, 22nd June, 1875.

(a) Act XIII of 1875 does not empower the High Court to grant probate limited to property in any Province or Presidency, in cases where an unlimited.

General—(Concluded).

grant had been made extending only to property in another Province or Presidency before the passing of the Act. 1 C. 52. S

- (b) *Per Macpherson, J.*—Rule 4 of the Rules of 22nd June, 1875 (15 B.L.R., H. Ct. Rules p. 10), as to grants of probate, only applies to grants of the class mentioned in Rule 1, *i.e.*, only to cases in which the application for probate is made after 1st April, 1875, and not to cases in which the application was made before that date. (*Ibid.*) T

30. Every probate granted to any Administrator General of a will wherein he is named as executor by virtue of his office shall be granted to him by his name of office, and shall authorize the Administrator General for the time being of the same Presidency to act as executor of the estate to which such probate relates.

Grant of probate to Administrator General named as executor by virtue of his office.

31. Any private executor or administrator may, with the previous consent of the Administrator General of the Presidency in which the property comprised in the probate or letters of administration is situate, by an instrument in writing under his hand ¹, notified in the local Gazette, transfer all estates, effects and interests vested in him by virtue of such probate or letters to the Administrator General by his name of office ;

Transfer by private executor or administrator of interest under probate or letters ².

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer :

and the Administrator General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid.

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

(Notes).

General.

Course of legislation with reference to the office of Administrator-General and his duties and powers reviewed.

The office of Administrator-General was created by Act VII of 1849, and the Act recites that the object of the Act is to disconnect the administration of the estates of British subjects—meaning European British subjects—from the office of Ecclesiastical Registrar, and to appoint an Administrator General. That Act only empowers the Administrator General to take out Administration to the estates of European British subjects.

Act VIII of 1855 amends the law relating to the office and duties of Administrator-General. By this Act the powers of the Administrator-General

General—(Continued).

are somewhat extended. His functions are no longer confined to the estates of the European British subjects. S. 11 specifies the circumstances under which the Administrator-General is required to take such proceedings as may be necessary to obtain administration to the effects of persons not being Hindus or Mahomedans. Ss. 12 and 14 deal with the estates of persons whether Mahomedans or Hindus or not. S. 12 provides that in cases of danger of misappropriation it shall be lawful for the Court to make an order directing the Administrator General to apply for letters of administration to the effects of such persons, and S. 14 empowers the Court, in cases where danger of misappropriation or waste is to be apprehended, to enjoin the Administrator-General to collect and hold the property of deceased persons whether Mahomedans or Hindus or not.

It is to be observed, therefore, that the powers of the Administrator-General, so far as they relate to the estates of Hindus are of a strictly limited character, and are only to be employed for the preservation of property where there is danger of waste or misappropriation. Neither in the Act of 1849 nor in that of 1855 is there any provision for the transfer of estates, such as we find in the two subsequent Acts.

The next Act, XXIV of 1867, is described as an act to consolidate and amend the law relating to the office and duties of Administrator-General. This Act followed very shortly after the Indian Succession Act. Section 179 of the latter Act provides that the property of deceased persons is to vest in the executor or administrator as the case may be. This law was to be applicable to all cases of intestate or testamentary succession throughout British India; but by S. 331 the estates of Hindus, Mahomedans or Buddhists are specially exempted from its operation.

In Act XXIV of 1867 the classification of persons adopted for the purposes of the Act is—(1) any person not being a Hindu, Mahomedan or Buddhist; and (2), any person whether a Hindu, Mahomedan or Buddhist or not.

Under this classification we find that by Ss. 17 and 18 of the Act, which closely correspond to Ss. 12 and 14 of the Act of 1855, the powers of Administrator-General as to estates of Hindus are strictly limited to cases where a danger of waste is apprehended. The Act of 1867 is however important as containing a new provision, namely, for the transfer of estates by private executors or administrators to the Administrator-General. S. 30 gives the right of transfer, with the previous consent of the Administrator-General, to any private executor or administrator. The question is whether the executor of a Hindu testator is within the words "any private executor."

So far as regards the time when Act XXIV of 1867 was passed the point is free from doubt. The executor by S. 30 may "transfer all estates, effects and interests vested in him by virtue of such probate." At that time these words were inapplicable to the case of a Hindu executor. S. 30 further provides that upon the transfer being effected "the Administrator General for the time being shall have the rights, and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate had been granted to him at the date

General—(Concluded).

aforesaid;" the "date aforesaid" being, the date of the transfer. These words seem to indicate that the intention was to limit the operation of the section to the estates of persons as to which the Court would have had authority under S. 16 to grant administration to the Administrator-General by reason merely of the unwillingness or inability of private executors, or other persons entitled to administration, to apply for such administration. In that view, that S. 30 would only deal with those cases where executors or administrators of persons mentioned in S. 16 became unwilling or unable to act, after taking out probate or letters of administration. It would not apply to those cases where the Court had no power to grant administration to the Administrator-General, unless, besides the unwillingness of the private executor or other person entitled to administration, it was further shewn that there was danger of waste or mis-appropriation to the estate which would otherwise remain unprotected. The latter class of cases come within Ss. 17 and 18 of the Act, which are the only sections applicable to the estates of Hindus. Moreover, turning to the Statement of the Objects and Reasons of the Act we find that S. 30 was intended to meet the case of private executors and administrators about to leave the country. These considerations seem to show that the words "any private executor or administrator" did not include the executor or administrator of any person falling within the larger classification of persons adopted in the Act, "whether Hindu, Mahomedan or Buddhist or not," but were intended to be confined to the restricted class of persons "not being Hindu, Mahomedan or Buddhist."

In the present Act (II of 1874), Ss. 16, 17 and 18 and S. 31 are in substance nothing but the re-enactment and re-production of Ss. 16, 17, 18 and 30, respectively, of the Act of 1867. The classification of persons whose estates are dealt with, and the phraseology of the sections, with one unimportant exception in S. 31 are the same as in the Act of 1867. 21 C. 732 (735, 736, 737, 738). U

N.B.—This case was, however renewed by the Privy Council in 22 C. 788 (P.C.) = 21 I.A. 107.

1.—"Under his hand &c."

The words "bearing a stamp of ten rupees and" were repealed by the Indian Office. Stamp Act, 1879 (I of 1879). U 1

2.—"Transfer by private executor.... of interest under probate etc."**(1) Transfer by executors to Administrator General.**

Where the executors of a will transfer their interest in the estate of the deceased under S. 31 of the Administrator General's Act to the Administrator-General, *held*, such a transfer would only transfer such powers of disposition over the estate as the executors themselves possessed. 23 C. 908. Y

(2) Power to transfer to Administrator-General—Not confined to any particular class of cases.

(a) The right to devolve the property of a deceased testator, with all powers and duties relating to the management and administration, which is conferred by S. 31 of the Act of 1874, is not confined to any particular class of executors of estates. 22 C. 788 (P.C.) = 22 I.A. 107. W

2.—“Transfer by private executor of interest under probate etc.”

—(Concluded).

- (b) It is given in broad and comprehensive terms, to any and every testamentary executor, in whom the estates of the deceased testator have been legally vested by virtue of the probate,—provided, only, that no transfer shall be made to the Administrator-General without his consent. 22 C. 788 (P.C.)=22 I.A. 107. **X**
- (c) Executors, having obtained probate of the will and possession of the estate of a Hindu testator, executed a deed purporting to be in terms of S. 31, Act II of 1874, transferring the property, vested in them by the probate, to the Administrator-General:—*Held*, that this transfer was valid under that section. 22 C. 788 (P.C.)=22 I.A. 107, reversing 21 C. 732. **Y**

(3) Act II of 1874—Position of Hindu executor—Right of transfer.

- (a) S. 31, Act II of 1874, is a re-enactment, without verbal alteration, of S. 30 of Act XXIV of 1867. At the time when the prior Act was passed, the executor of a Hindu testator was not a person entitled to transfer under the Act. But by the time the later Act was passed, he became a person entitled so to act, by virtue of the provisions of the Hindu Wills Act, 1870. 22 C. 788 (P.C.)=22 I.A. 107. **Z**
- (b) So, a Hindu executor after the passing of the later Act, may effect a valid transfer of the estate, under S. 31 of the Act. 22 C. 788 (P.C.)=22 I.A. 107. **A**

(4) Rights as between the Administrator-General and executors transferring estate to him and the petitioner interested in that estate.

In a suit, by a plaintiff interested in the estate, wholly based on the alleged illegality of its transfer, by the executors named in the will of a Hindu, to the Administrator-General (Act II of 1874, S. 31), decrees were made by the High Court Original and Appellate, in the plaintiff's favor. The Judicial Committee, however, *held* the transfer legal; and the suit, brought against the Administrator-General and the executors as co-defendants, was dismissed. **B**

Held, on the plaintiff's petition for such modification of the order dismissing the suit as would maintain what had been ordered below relating to the accounts, thereby enabling the High Court to bring matters in dispute to an end, that there were no grounds for the amendment. 22 C. 1011. **C**

(5) Conflict between Administrator-General and Court of Wards—Nominee of Court of Wards, if can be appointed Administrator.

- (a) The Court of Wards, as such cannot be appointed Administrator. 10 C.W. N. 241. **D**
- (b) There is nothing, however, to prevent this Court, in certain circumstances, *e.g.*, in this case where the testator wished the minor's estate to be entrusted to the Court of Wards, from appointing the nominee of the Court of Wards (in most instances the manager) Administrator of the testator's estate, with the will annexed under S. 31 of the Probate and Administration Act. (*Ibid.*) **E**
- (c) *Held*, on the facts of this case, that the Administrator-General's taking possession of the estate of the testator was illegal. (*Ibid.*) **F**

32. Whenever the Administrator General carries over assets to separate accounts in his books, he shall notify the fact in the local official Gazette; and he may, with the consent of the Official Trustee, and subject to such rules as the Governor General in Council may from time to time prescribe in this behalf, appoint the Official Trustee to be the trustee of such assets; and upon such appointment such assets shall vest in the Official Trustee and his successors in office, and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No. XVII of 1864 such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act.

33. All estates, effects and interests which, at the time of the death, resignation or removal from office of any Administrator General, are vested in him by virtue of such letters of administration, probates or transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto.

All books, papers and documents kept by such Administrator General by virtue of his office or as such executor or transferee as aforesaid shall be transferred to and vested in his successor in office.

(Notes).

General.

Administration-bond—Execution and assignment—Indian Succession Act, Ss. 256 and 257.

(a) Under S. 256 of the Indian Succession Act, the administration bond should be given to the "Judge of the District Court." In the case of the High Court, such bond may be given in the name of the Chief Justice. Under S. 257, such a bond may be assigned to "some person, his executors, and administrators." The Administrator-General is such a person. This section is not confined to private individuals only. 3 C.L.J. 422=10 C.W.N. 673=33 C. 713. G

(b) In the case of the High Court, such a bond can only be assigned by the Court through one of its officers, e.g., the Registrar on the Original side. (*Ibid.*) H

(b) *Suits by and against the Administrator General.*

Administrator General to sue and be sued in his name of office.

34. All suits and other proceedings commenced by or against any Administrator General in his representative character¹ may be brought by or against him by his name of office,

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator General, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Administrator General; but the same may, by

Suit not to abate by death, &c.

order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred :

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

(Note).

1.—“In his representative character.”

Suit against Administrator-General—Jurisdiction.

A suit brought against the Administrator-General must be instituted in the District Court ; it makes no difference if the Administrator-General is not a party to the suit in his official capacity, but is sued simply as representing the estate of a private individual. 6 Bom. L. R. 546=28 B. 529. I

35. If any suit be brought by a creditor against any Administrator General in his representative character, the plaintiff shall be liable to pay the costs of the suit¹ down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under the circumstances of the case, the Administrator General was reasonably entitled to require, and that the Administrator General had refused or neglected to register the claim according to the practice of his office.

If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.²

(Notes).

General.

(1) Scope and application of section.

“This section, as framed, only applies to a suit originally instituted against the Administrator-General, and not to a case instituted against a deceased and then revived in the name of the Administrator-General.” See Henderson’s Testamentary Succession, 3rd Ed., 1909, p. 430. J

(2) Interest Act, 1839, S. 1—Certificate of Administrator-General admitting debt—Whether “written instrument.”

A certificate of the Administrator-General admitting a debt to be due is not a “written instrument” such as is contemplated by the Interest Act, because the amount mentioned therein is not payable by virtue of the certificate, which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. 25 C. 54. K

1.—“*Shall be liable to pay the costs of the suit, etc.*”(1) “*Shall be liable to pay*”—Meaning.

The expression “shall be liable to pay the costs” in cl. (1) of the section shows that it was intended not to impose upon a creditor to whom the condition of exemption was inapplicable, an absolute obligation to pay the costs of the suit, but to leave a discretion to the Court to relieve him of the obligation if the circumstances of the case required it. 25 C. 54=1 C.W.N. 500. (*Davis v. Young*, L.R. 27 Ch. D., 662, R.) L

(2) **Costs of Administrator General in a suit to recover such property, how paid—Expenses of taking care of such property incurred by Administrator-General.**

- (a) The Administrator General is in the position of an interpleading plaintiff, and he is entitled, in the first instance to recover his costs from the losing claimant. 10 B. 350. M
- (b) Failing recovery from him he was entitled to be paid his costs out of the estate. (*Ibid*). N
- (c) If and in so far as that estate proved insufficient, he would be entitled to recover them out of the property which was the subject matter of the suit. (*Ibid*). O
- (d) The costs of the Administrator General included the expenses incurred by him in taking care of the property entrusted to him by the order of the Court. (*Ibid*). P
- (e) Costs—Next friend—Administration suit—Unnecessary suit—Liability of next friend for costs—Adoption of suit by plaintiff—Costs of solicitor of next friend where suit unnecessary—Solicitor's lien on estate recovered or preserved by suit—Preservation of estate from future risk—Appointment of receiver—Insane executrix. See 10 B. 248. Q

(3) **Right of plaintiff succeeding only in part—Costs.**

Under the special terms of the Administrator-General's Act, a plaintiff, who succeeds only in part, would not be entitled to any costs as against the estate, in respect of which the suit is brought; but would, on the other hand, be liable to pay costs on the disallowed portion of his claim. 12 C. 357. R

2.—“*Equally and rateably with the other creditors.*”(1) “*Rateable payment*”—Meaning.

The “rateable payment” referred to in all these sections is rateable payment out of the assets. It is nowhere provided that it shall be made out of the net income of the estate, or any other specific part of the assets. 25 C. 54. S

(2) **Judgment-creditor—Priority of claim over assets in the Administrator General's hands.**

- (a) The holder of a decree for money, the judgment-debtor dying intestate, is entitled to have his decree satisfied out of the assets of the deceased in the hands of the Administrator-General, though the assets may not be sufficient to pay off all claims against the estate. 10 C. 929. T
- (b) S. 35 of the Administrator-General's Act is limited to the express purpose for which it was enacted, and there is nothing in that Act or in the Civ. Pro. Code to change the position of the Administrator-General, or to put him in a better position than any ordinary suitor. (*Ibid*.) U

2.—“*Equally and rateably with the other creditors*”—(Concluded).

- (c) Plaintiff on the 15th June 1868, immediately after the death of his debtor, brought a suit against the debtor's widow (1st defendant) for recovery of the debt, and, before judgment, obtained attachment and sale of property of the deceased, the sale proceeds being kept in deposit in the Court. These proceedings took place in June and July, and on the 15th August administration was granted to the Administrator-General, the widow not having taken out administration. On the 28th September the Administrator-General was, on plaintiff's application, made defendant in place of the widow and the suit proceeded against him to decree. Before plaintiff applied to execute this decree the amount of the sale proceeds was, by the direction of the Civil Judge, handed over to the Administrator-General, and, accordingly, on this ground plaintiff's application to the District Munsiff for execution was rejected. He appealed unsuccessfully to the Civil Court. *Held*, on special appeal, that S. 33 of Act XXIV of 1867 took away plaintiff's right to payment otherwise than rateably with the other creditors. 6 M.H.C.R. 346. **Y**

(3) **Assets sufficient—Creditor's right to demand payment in full.**

- (a) S. 35 of the Administrator-General's Act does not empower him in any way to insist that the creditors of estates in his hands shall accept payment of their claims by instalments out of the net income, although there may be ample realizable assets available for the immediate payments of the debts in full, nor does it qualify, restrict or otherwise interfere with the right of a creditor to demand immediate payment in full when there are sufficient assets. 1 C.W.N. 500 (501) = 25 C. 54. **W**
- (b) The provision for rateable payment of creditors in S. 35 of the Administrator General's Act, as also in S. 282 of the Succession Act, and S. 104 of the Probate and Administration Act, deal with the cases where the general assets or the realizable assets are or might be insufficient for the payment in full of the claim of all the creditors. (*Ibid*). **X**

(c) *Grant of Certificates by the Administrator-General.*

36. Whenever any person shall have died, whether within any of the

In what case
Administrator
General may grant
certificate.

said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left assets (whether moveable or immoveable, or both) within any of the said Presidencies, and the Administrator-General of such Presidency is satisfied that such assets do not exceed in the whole one thousand rupees in value,

he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person, claiming otherwise than as a creditor to be entitled to a share of such assets, certificates

under his hand entitling the claimant to receive the property therein mentioned, belonging to the estate of the deceased, to a value not exceeding in the whole one thousand rupees :

No certificate where probate or administration granted or for money in Government Savings Bank.

sited in Government Savings Bank.

Provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted or in respect of any sum of money depo-

(Notes).

General.

N.B.—The words and figures "*not being a Hindu, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, S. 332, from the operation of that Act,*" were repealed by the Administrator General's Act (IX of 1881), S. 5.

Practice of Administrator-General of Bengal.

- (a) The ——— has been to grant a certificate so long as the applicant is residing within the Presidency as defined by the Act, See Henderson's Testamentary Succession 3rd edition, 1909, p. 431. Y
- (b) Under Ss. 212 and 213 of Act X of 1865, the applicant must be within the province, but under the High Court Rules the applicant has to be resident within the jurisdiction. (*Ibid.*) Z
- (c) The Act is silent as to the place of residence of the applicant and the matter seems to have been left to the discretion of the Administrator General. (*Ibid.*) A

37. If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a *Native Christian* ², Hindu, Muhammadan, Parsi or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him ;

and if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased,

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Provided that the Administrator General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Proviso.

(Notes).

1.—“Grant of certificate to creditors.”

The first paragraph of S. 37 was substituted for the original paragraph by the Indian Succession Law Amendment Act, (II of 1890). S. 11 (1). **B**

2.—“Native Christian.”

The words “Native Christian” were inserted by the Native Christian Administration of Estates Act, (VII of 1901), S. 4; not, however, affecting any probate, letters of Administration or certificate granted or vested under this Act. **C**

Administrator General not bound to grant certificate unless satisfied of claimant's title, &c.

38. The Administrator General shall not be bound to grant any certificate under section 36 or 37,¹ unless he be satisfied of the title of the claimant and of the value of the assets of the deceased, either by the oath or affirmation of the claimant, * * * ² or by such other

evidence as he requires.

(Notes).

1.—“Certificate under S. 36 or 37.”

N.B.—These words were substituted for the words “any such certificate” by the Administrator-General's Act, (IX of 1881), S. 6. **C 1**

2.—“Claimant....or by such other &c.”

N.B.—The words “(which oath or affirmation the Administrator-General is hereby authorized to administer or take),” were repealed by the Administrator General's Act, (IX of 1881), S. 6. **C 2**

Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him

of the money or security for money therein mentioned, to the person paying or delivering the same :

Right of executor or administrator against certificate-holder.

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Right of creditor against assets in hands of certificate-holder.

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Administrator General not bound to take out administration on account of effects for which he has granted certificate.

40. The Administrator General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

41. For every such certificate the Administrator General shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate.

Fee for certificate.

41-A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(Notes).

General.

S. 41-A was inserted by the Indian Succession Law Amendment Act, 1890 (II of 1890), S. 12.

C 3

(d) *Expenses of the Administrator General's Establishment.*

Administrator General to defray expenses of establishment.

42. The Administrator General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

(e) *Accounts and Schedules.*

43. The Administrator General of each of the said Presidencies shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds and other securities for money, goods, effects and things as come to his hands, or to the hands of any person employed by him or in trust for him under this Act: and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

Such books shall be kept in the Administrator General's Office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee¹ for the time being fixed by the Government and published in the official Gazette of the Presidency to which the same may relate.

Administrator General to keep separate account for each estate.

(Notes).

1.—“Fees &c.”

(1) Fees prescribed under this section.

- (a) for the Presidency of Bengal, see Gazette of India, 1867, p. 566. This order is kept in force by para. 2 of S. 2 of this Act, vide *supra*; **D**
- (b) by the Government of Bombay, see Bom. R & O. (noted *infra*). **D-1**

(2) Rules as to fees.

- (a) Fees payable on applications for information to Administrator General—No. 2866, dated the 20th March, 1867 :—Under S. 31 of Act VIII of 1855, the Governor General in Council is pleased to direct that from and after the 1st April, 1867, the under-mentioned fees shall be levied from parties seeking information from the office of Administrator-General, viz :—

For information on any single point in respect of which an advertisement has duly appeared. One Rupee.

For search for information regarding estates which have been wound up. Four Rupees per hour.

The above fees to be paid whether the search made has been successful or otherwise.

(See Gazette of India, 1867, Pt. I, p. 566).

(b) Levy of fees for inspecting books kept by the Administrator-General.

- (1) Notification, dated 17th December, 1867, B.G.G. 1867, Pt. I, p. 476—Under S. 41 of Act XXIV of 1867, the Right Honourable the Governor in Council is pleased to direct that from and after this date the undermentioned fees shall be levied from parties requiring to inspect the books kept by the Administrator General, viz :—

I.—“Fees &c.”—(Concluded).

For information on any single point in respect of which an advertisement has
duly appeared 1 Rupee

For search for information regarding estates which have been wound up, per
hour 4 Rupees

The above fees to be paid whether the search made prove successful or other-
wise.

See Local Rules and Orders, Bombay, 1896 Ed., Vol. I, p. 102.

E

N.B.—See also Rules noted at the end of the Act.

44. The Administrator General of each of the said Presidencies shall
twice in every year, that is to say, on or before the
Administrator General to furnish half first day of April, and on or before the first day of
yearly schedules. October, or on such other days as the Government, by
any rules or orders to be published as aforesaid, may
direct, exhibit and deliver, in the High Court at Calcutta, Madras or
Bombay, as the case may be,—

- (a) a schedule showing the gross amount of all sums of money re-
ceived or paid by him on account of each estate in his charge,
and the balances, during the period of six months ending
severally on the thirty first day of December and thirtieth day
of June next before the day of delivering such schedule,
- (b) a list of all bonds or other securities received on account of
each of the said estates during the same period,
- (c) a schedule of all administrations whereof the final balances have
been paid over to the persons entitled to the same, during
the same period, specifying the amount of such balances and
the persons to whom paid.

Such schedules shall be filed of record in such High Court, and shall,
within fourteen days afterwards, be published in the
Schedules to be official Gazette of the Presidency by the Adminis-
trator General ;

and copies thereof in triplicate shall be delivered by such Administra-
Copies of schedules. tor General to the Government, and shall be sent by
such Government to the Secretary of State for India,
in order that such Secretary may, if he think fit, order the same to be de-
posited at the India Office for public inspection, and cause notices to be
published in the London Gazette and other leading newspapers that such
schedules are open to inspection there, or make such other orders respect-
ing the same as he thinks fit.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

45. The Government shall from time to time appoint auditors to examine the accounts of the Administrator General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

Government to appoint auditors.

46. The auditors shall examine the schedules and accounts, and report to the Government—

Auditors to examine schedules and report to Government.

(a) whether they contain a full and true account of everything which ought to be inserted therein,

(b) whether the books which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator General, have been duly and regularly kept, and

(c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

47. Every auditor shall have power to summon as well the Administrator General, as any other person whose presence he thinks necessary, to attend him from time to time ; and to examine the Administrator General or other person if he thinks fit, on oath or affirmation to be by him administered ; and to call for all books, papers, vouchers and documents which appear to him to be necessary for the purposes of the said reference.

Auditors to summon witnesses and to call for books, etc.

If the Administrator General or other person when summoned refuses, or, without reasonable cause, neglects to attend or to produce any book, paper, voucher or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency town ;

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Penalty for non-attendance.

48. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts relate.

Costs of preparing schedules, etc.

Such costs and expenses, and the portion thereof to be contributed by each of the said estate, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator General.

49. If upon any such reference and examination the auditors see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained or which ought to be therein contained or that the assets have not been duly kept and invested or deposited in the manner directed by this Act, or by any such rules and orders as aforesaid, or that the Administrator General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government.

Special report to Government if accounts appear incorrect.

50. The Government may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency-town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter ;

Proceedings upon such report.

and the said Advocate General may exhibit interrogatories to the said Administrator General, executor or administrator (hereinafter called the defendant) who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure for his examination upon the said interrogatories.

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

51. The costs, including those of the Advocate General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs ; and whenever any costs are recovered from the defendant the same shall be repaid to the estates by which they have been in the first instance contributed ; and the Court may, if it think fit, order the defendant to receive his costs out of the said estates.

Costs of reference, &c., how to be defrayed.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR GENERAL.

52. The Administrator General of each of the said Presidencies, under any letters of administration granted to him in his Commission to be received by Administrators General. official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely:—

The Administrator General of Bengal at the rate of three *per centum* and the Administrators General of Madras and Bombay respectively at the rate of five *per centum* upon the amount or value of the assets ¹ which they respectively collect and distribute in due course of administration.

(Notes).

I.—“Assets.”

“Assets” meaning of—Revenue paying estate.

- (a) The Administrator General is entitled to charge only one commission upon his collection. 31 C. 572. F
- (b) He is entitled to commission upon the entire collections of a revenue paying estate. 31 C. 572. G
- (c) He is not entitled to commission on the value of the *Corpus* of such part of the estate as is in the hands of a Receiver, but only on realizations made and handed over to him by such Receiver. 31 C. 572. H
- (d) The entire rents of a revenue paying estate, when collected by the Administrator General, become the “property” of the estate in his hands, and the application of such property in the payment of revenue is a distribution of such property in due course of administration. (Per Sale, J. in) 31 C. 572. I
- (e) In this sense the property of a deceased person applied in payment of revenue is “an asset” within the meaning of the Administrator General’s Act, and as such is chargeable with commission. (Per Sale, J. in) 31 C. 572. J

53. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Administrator General of any of the said Presidencies, under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863 ;

and such Administrator General shall not take a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator General’s Act, 1865, if preferential charges as defined by the 4th section of the said Statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

54. The Administrator General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but, save as aforesaid, the commission to which the Administrator General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

It is therefore enacted that one half of such commission shall be payable to and retained by such Administrator General upon the collection of the assets ¹ and the other half thereof shall be payable to the Administrator General who distributes any assets in the due course of administration, and may be retained by him upon such distribution.

The amount of the commission lawfully retained by an Administrator General upon the distribution of assets shall be deemed a distribution in the due course of administration within the meaning of this Act.

Explanation.—The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section.

(Notes).

General.

The Administrator General's right of retainer.

The Administrator General has the same rate of retainer in satisfaction of his own debt as that which an ordinary executor or Administrator has. See *Ritchie v. Stokes*, 2 Madd. 255. J-1

I.—“Collection of the assets.”

“Collection of assets,” meaning of.

- (a) The expression “collection of assets” implies the doing of some act in connection with such assets. 25 C. 65. (1 M.H.C. 171 F.) K
- (b) The term “assets” means and includes, “property of a deceased person chargeable with and applicable to the payment of his debts and legacies.” It would, therefore, include immoveable property. But the commission chargeable by the Administrator General under S. 54, is in respect of the collection and distribution of all assets. (*Ibid.*) L

55. The Governor General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator General of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction of the Governor General in Council, from time to time, order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced, and again to be raised :

Commission of Administrators General of Madras and Bombay may be reduced and again raised.

be raised :

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

55-A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

Commission on assets collected beyond Presidency.

(Notes).

N.B.—S. 55-A was inserted by the Administrator General's Act, 1881 (IX of 1881), S. 7.

56. Repealed by Act V of 1902, S. 4 (1).

(Notes).

N. B.—(1) S. 56 was repealed by the Administrator General and Official Trustee's Act, 1902 (V of 1902), S. 4 (1).

S. 56 was as follows:—No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any Probate or letters of Administration, or letters *ad colligenda bona*, which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII of 1849 (for the appointment of an Administrator General in Bengal), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II of 1850, (to amend and extend to Madras and Bombay Act No. VII of 1849), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of Ss. 187 and 190 of the Indian Succession Act, 1865.

But this amendment shall not prevent any executor or other persons from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

N.B.—(2) As to the controversy which arose on the provision of this section see Administration Practice of India by A. P. Kenny, 1907, pages 6 and 7.

PART VI.

MISCELLANEOUS.

Power to make
rules.

57. The Government may from time to time make rules ¹ consistent with the provisions of this Act—

for custody of as-
sets ;

(a) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General ;

for remittance of
money ;

(b) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required ;

for guidance of
Administrator
General.

(c) generally for the guidance of the Administrator General in the discharge of his duties ;

and may by such rules amongst other things direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator General shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

Proviso as to rules
now in force.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

(Notes).

1.—“ *The Government may . . . rules.* ”

Rules under this section.

(a) for the Presidency of Bengal, See Calcutta Gazette, 1856, p. 544. These rules are kept in force by the proviso to this section ; (But see now Home Department Notification, Judicial, dated 31st May, 1910).

(b) by the Government of Bombay, see Bom. R. & O., and Bombay Government Gazette, 1907, Pt. I, p. 1406 ;

(c) by the Government of Madras, see notifications quoted in the Mad. R. & O., and Fort St. George Gazette, 1898, Pt. I, p. 702, *ibid.* 1899, Pt. I, p. 917.

M-N

N.B.—See these Rules noted at the end of this Act.

58. Such rules shall be published in the Gazette of India, the Fort St. George Gazette, or the Bombay Government Gazette, as the case may be, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

59. The Governor General in Council may from time to time, either by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator General and the estates held by him in his official capacity.

Power to decide when commission shall be deemed payable.

60. Any order made under this Act by any Court shall have the same effect and be executed in the same manner as a decree.

60-A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question.

Power to examine on oath.

(Notes).

N.B.—S. 60-A was inserted by the Administrator General's Act; 1891 (IX of 1891), S. 3.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes upon any examination authorised by this Act a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

False evidence.

62. All assets in the official charge of the Administrator General of any of the said Presidencies, and appearing from the official books and accounts of the Ecclesiastical Registrar and of the Administrator General of any of those Presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller General of Accounts or to the Accountant General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of government;

Assets unclaimed for fifteen years to be transferred to Government.

and the receipt of the said Comptroller General or Accountant General as the case may be, shall be a full indemnity and discharge to the said Administrator General for any such transfer or payment :

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof.

63. If any claim be hereafter made to any part of the securities, moneys or proceeds carried to the account and credit of the Government of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller General or the Accountant General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit or so much thereof as appears to be due to the claimant.

If the claim be not established to the satisfaction of the said Comptroller General or Accountant General, as the case may be, the claimant may apply by petition to the High Court at the Presidency-town against the Secretary of State for India, and, after taking evidence either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and such order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the costs of each party shall be paid.

(Notes).

General.

Application under the Administrator General's Act (XXIV of 1867), S. 60—"Suit."

- (a) An application by the petition under S. 63 of Act II of 1874 is a suit within the meaning of S. 13 of Act X of 1877, and therefore such an application is barred by the disposal of a former application in the same matter under the same section, or under S. 60 of Act XXIV of 1867, which the Act of 1874 repeals. 3 C. 340. **O**
- (b) This is so whether the order is one for payment of money or one dismissing the petition. 3 C. 340. **P**
- (c) S. 63, Act II of 1874, contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant, and that those parties may appear and be represented at the bearing; and the words "binding on all parties" were intended to make the order binding upon such parties as well as on the petitioner. 3 C. 340. **P-1**
- (d) The order passed under that section can be reviewed under S. 623 of Act X of 1877. 3 C. 340. **Q**

64. Whenever any person, other than a *Native Christian*,¹ Hindu Muhammadan, *Parsi*² or Buddhist or a person ex-

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

empted under the Indian Succession Act, 1865, section 332, from the operation of that Act; dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of

the Presidency, stating the following particulars so far as they may be known to him :—

(a) the amount and nature of the assets,

(b) whether or not the deceased left a will, and, if so, in whose custody it is,

and, on the lapse of one month from the date of the death,

(c) whether or not any one has applied for probate of the will of the deceased or letters of administration to his effects.

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865, section 239, to take and keep possession of the same until the Administrator General has obtained letters of administration, or until some other person has obtained such letters or a certificate from the Administrator General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.

The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely:—

(a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects,

(b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer artizan or domestic servant, and

(c) the relief of the immediate necessities of the family of the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succession Act, 1865, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made.

(Notes).

1—"Native Christian."

N.B.—The words "Native Christian" were inserted by the Native Christian Administration of Estates Act, 1901 (VII of 1901), S. 4 : not, however affecting any probate, letters of administration or certificate granted or vested under this Act.

2—"Parsi."

The word "Parsi" in S. 64 was inserted by the Administrator General's Act, 1881 (IX of 1881), S. 2. R

3—"The District Judge, etc."

This paragraph was added to S. 64 by the Indian Succession Law Amendment Act, 1890 (II of 1890), S. 13. S

65. Nothing in this Act is intended to require the Administrator General to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier or other person subject to any Articles of War, unless when the Administrator-General is duly authorized or required so to do by the Military Secretary to Government, or by a Committee of Adjustment or other officers or persons acting under any law for the time being in force relating to the payment of regimental debts ;

Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary or Committee of Adjustment.

nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any Articles of War.

66. Nothing contained in the Indian Succession Act, 1865, or the Indian Companies Act, 1866, shall be taken to supersede or affect the rights, duties and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay respectively.

Succession Act and Companies Act not to affect Administrator General.

And nothing contained in the Indian Succession Act, 1865, or in this Act, or in the said Act No. XXIV of 1867, shall be deemed to affect, or to have affected, any provisions for the time being in force ¹ relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the Presidency-towns, which shall be or has been taken charge of by the police for the purpose of safe custody.

Saving of provisions of Presidency Police Acts as to petty estates.

(Note).

1.—"Provisions for the time being in force."

See the Calcutta Police Act, 1866 (Bengal Act IV of 1866), Ss. 100, 101, the Madras City Police Act, 1888 (Madras Act III of 1888), S. 30, and (as to Bombay) Act XIII of 1856, Ss. 113, 114. T

Compliance with
requisitions for re-
turns.

67. The Administrator-General shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

(Note).

N.B.—S. 67 was added by the Indian Succession Law Amendment Act, 1890 (II of 1890), S. 14.

U

PART VII.

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

Division of the
Presidency of Bengal
into Provinces.

68. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the Office of the Administrator-General of Bengal, may, by notification in the Gazette of India,—

- (a) divided the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,
- (b) define the limits of each of those Provinces; and
- (c) appoint an Administrator General for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—
 - (i) the Office of Administrator-General of Bengal shall cease to exist:
 - (ii) the Administrator General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province, as the Administrator General of Bengal had and performed as Administrator General therein:
 - (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor-General in Council:
 - (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator-General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs throughout British

India, as, but for the abolition of the Office of Administrator General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had:

- (v) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, the expression "Presidency-town" the place of sitting of a High Court appointed by the Governor-General in Council under clause (iv) of this sub-section, and the expression "Advocate-General" a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency :
- (vi) the provisions of this Act with respect to the commission of the Administrator-General of Bengal, shall regulate the commission payable to the Administrator General of a province : and,
- (vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment with respect to the Administrator General of Bengal, shall, in relation to a Province, be construed, so far as may be, to apply to the High Court and Administrator General, respectively, appointed for the province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces, and to or in which the Administrator-General of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Administrator General of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator General of Bengal.

(3) ¹ Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into Provinces under this section, the Administrator General of the Province in which the town of Calcutta is comprised shall be deemed to be the Administrator General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863.

(Notes).

General.

N.B.—(i) Part VII was added by the Indian Succession Law Amendment Act, 1890 (II of 1890), S. 15. Y

1.—"Sub-Section 3."

N.B.—Sub-section (3) was repealed by the Lower Burma Courts Act, 1900, (VI of 1900), S. 48 and Sch. II. W

RULES UNDER ACT II OF 1874. (ADMINISTRATOR GENERAL).

I—BENGAL.

N.B.—The various forms referred to in the following rules are not reproduced.

(1) Rules for the guidance of the Administrator General of Bengal.

HOME DEPARTMENT NOTIFICATION.

JUDICIAL.

THE 31ST MAY, 1910.

No. 778.—In exercise of the powers conferred by Ss. 48 and 57 of the Administrator-General's Act, 1874 (II of 1874), the Governor-General in Council is pleased to make, in supersession of all previous rules, the following rules for the guidance of the Administrator-General of Bengal in respect of the matters referred to in the said sections.

RULES.

1. Any of the duties required by these rules to be performed by the Administrator-General may be performed by the Deputy Administrator-General unless it appears from the contest that the contrary is intended.
2. The Administrator-General shall keep the accounts, statements and other records enumerated and described in the first schedule hereto annexed.
3. Every payment charged in the Administrator General's General cash account shall be supported by a voucher which shall be passed for payment under the initials of the Administrator General.
4. All payments made to persons resident in the United Kingdom shall be made through the Official Agent to the Administrator General at the India Office by means of bills of exchange payable on demand in London. Such bills of exchange shall be obtained by the Administrator-General from the Bank of Bengal, who shall be at liberty to select the Bank or Banks from which such bills shall be purchased.
5. The Administrator-General shall not, except for special reasons, retain in his hands a larger sum in cash than Rs. 2,000. Any excess beyond that amount shall be lodged in the Bank of Bengal as soon as practicable after its receipt.
6. (a) Whenever the cash balance to the credit of the general account of any estate, after providing for ascertained current demands and out goings, amounts to or exceeds Rs. 100, it shall be invested in Government securities, or in any other securities expressly authorised by the will or deed under which the Administrator General holds the estate and in which he is requested so to invest the same by the persons beneficially interested in such cash balance.
- (b) The cash balance standing to the credit of a separate account which represents the interest or income of investments or other property, and which is payable by way of annuity or otherwise to the person or persons entitled thereto, or standing to the credit of any depositor in the sundry estates deposit account, although it exceeds Rs. 100 in amount, should not be invested unless it can properly be treated as dead assets.

- (c) No cash balance standing to the credit of an estate in the Dividend Account, although it exceeds Rs. 100 in amount, shall be invested until three years have elapsed from the date of the transfer of the amount to such account.

7. In dealing with the payment of claims of creditors the amount of which claims has been transferred by the Administrator General to the credit of the Dividend Account, the Administrator-General shall in each case, as soon as he is in a position to pay such claims, forward a special notice to each creditor whose claim has been admitted and registered together with a receipt for the amount payable to him, for his signature, whether such receipt represents the total amount of his claim or a dividend, and such notice shall be sent to the creditor at his registered address. On presentation of the receipt duly signed accompanied by the Registry Certificate (unless the non-production of the latter be satisfactorily accounted for), the amount shall be paid and debited in the Dividend Account.

The Registry Certificate, where payment is made in full, shall be retained, but where only a dividend is paid it shall be returned to the creditor with an endorsement thereon showing the amount of dividend so paid.

All sums of money which have been transferred to the Dividend account as herein-before provided for, and which remain unclaimed in such account for a period of three years from the date of the transfer, shall, if they exceed the aggregate of Rs. 100 in any estate, thereafter be invested in Government securities, which shall be ear-marked to the particular estate in that account, and all interest realised on such securities shall be credited to that account. Any creditors who subsequently come forward to receive payment will be paid their proportionate share of the interest on such securities, and should there be a loss on the general balance of the account owing to the depreciation in the value of the securities at the time of sale, they will have to bear their proportionate share of such loss.

8. All Government securities and Bank or other shares or debentures coming into the possession of the Administrator General shall as soon as practicable be lodged in the Bank of Bengal for safe custody, except in any case in which it may be necessary for him to retain them temporarily for any purposes, such as drawing dividends, sale in due course of administration, closing the accounts of the estate, or such like. All such securities or shares shall as soon as practicable be endorsed or transferred into the name of the Administrator General and ear-marked to the estate to which they respectively belong.

9. There shall always be maintained in the office of the Administrator-General a room which shall be provided with iron safes for the safe custody of all cash currency notes and other securities and other assets, such as jewels, etc., and also title deeds and other documents belonging to the estates, and the keys of such room and safes shall be kept in triplicate, two sets in the possession of the Administrator General and the Deputy Administrator General respectively, and the third set in the Bank of Bengal. All jewels, ornaments and other articles of a like nature which are of any substantial value shall as soon as possible be listed and valued by an expert to be selected by the Administrator General. When the value of such jewels or other articles exceeds Rs. 500, the Administrator General shall deliver them for safe custody after they have been valued to the Bank of Bengal or to a Bank or firm approved by the Government of India in this behalf; and if their value does not exceed Rs. 500, he may either deliver them to such Bank or firm for safe custody or retain them in the strong room in his office.

10. The Administrator General may transfer to a separate account, which shall be styled "The Petty Receipts of Closed Estates Account," all small balances which, when the accounts of an estate are closed, are, owing to the amounts being so small, indivisible amongst the beneficiaries or creditors of the estate entitled thereto, and also any sum received as and by way of further assets of an estate after it has been closed, and which, owing to the smallness of the amount, is equally indivisible. Should any further assets be received to the credit of an estate in which such a transfer has been made, and such further assets together with the amount or amounts, if more than one, so transferred to this account be in the aggregate capable of division amongst the beneficiaries or creditors entitled thereto, the amount or amounts so transferred to this account shall be written back to the credit of the general account of the estate concerned, which shall be re-opened and a further distribution of such assets then made.
- Petty Receipts of Closed Estates Accounts.
11. The following fees shall be payable to the Administrator-General for inspection and search of and searches in the books and records of his office, and fees. all such fees shall be credited to the commission account :—
- For information on any single point in respect of which an advertisement has duly appeared Re. 1/
- For inspection and searching the books and records for information regarding Estates which have been wound up and closed. ... Rs. 4 per hour and such fees are payable whether the search has been successful or otherwise.
12. In all cases in which the Administrator General grants a certificate under the provisions of section 36 or 37 of the Act, he may, prior to granting such certificate, if he thinks fit, issue a general citation and advertise the same in such newspapers as he thinks fit, and he shall after having granted such certificate cause an advertisement of having granted the same to be issued in such newspapers as he thinks fit.
- Advertisement of Certificates.
13. On receipt of notice of the death of any person who was, or who the Administrator General has reason to suppose may have been, the subject of any Foreign State to which the provisions of section 8 of the Administrator General and Official Trustees Act, 1902, have been applied by the Governor General in Council, the Administrator General shall forthwith give notice of such death to the Consular Officer of such Foreign State at Calcutta, and shall inform the District Judge, who has reported such death, of his having done so. In such a case the Administrator General shall take no steps to administer or in any way deal with such an estate, without the consent of such consular officer, or until he has expressed his intention of not moving in the matter.
- Subjects of foreign States.
14. The Administrator General may, after the expiration of one year from the date of his closing the administration of any estate in his hands, destroy all private papers, bills, receipts, memoranda or other similar documents of no value which he has received along with the estate and which are not claimed by the beneficiaries, next of kin or any other persons entitled thereto.
- Destruction of Papers.
15. In order to allow of the more efficient and economical management of house properties and zamindaris belonging to estates under the charge of the Administrator General, the costs of the management which are debitable to estates under the provisions of section 54, it shall be open to the Administrator General to employ a General Manager and such assistants as may be necessary for the management thereof in the
- Management of house properties and zamindaris.

House Property and Zamindari Departments instead of employing separate managers and assistants in the case of each estate. The costs of establishment and expenses in connection with such general management shall be debited to the estates concerned in proportion to the value of the house property and zamindaris respectively owned by each estate, taking also into consideration the nature and expenditure involved in the management of the different properties belonging to each estate. All expenditure in the House Property Department shall be debited to an account to be called the House Property Department Account, and each estate may be debited with a monthly sum, such sum being calculated upon its proportionate share of the annual expenditure in the Department, and being altered and adjusted from time to time in accordance with the increase or reduction in the amount of property in charge of the Department and the corresponding increase or reduction in the total expenditure. The salaries of the manager and assistants and other expenditure of the Zamindari Department which is not incurred specifically on account of any particular estate shall similarly be rateably divided amongst all the estates concerned in proportion to the amount of annual collections of the various zamindaris, taking also into account the nature and the amount of work involved in the management thereof. Each estate shall however be debited with any particular expenditure, solely and exclusively incurred in that Department on its account. In the case of each of the two Departments, the general expenditure shall be so regulated that in no case shall any estates be debited with a larger sum than it would ordinarily cost to manage it were the property belonging to it placed under the management of its own separate staff, or with a higher proportion of the cost of the general establishment than should reasonably and properly be debited to it.

16. For the better classification of the information which by Section 44 of the Act the Administrator General is required to exhibit, and deliver to
Forms.

the High Court at Calcutta and to publish in the official Gazette of the Presidency, the Administrator General shall periodically cause tables to be prepared in the forms set forth in the second Schedule hereto annexed.

17. (1) The General Accounts of the Administrator General shall be audited by the
Audit.

Auditors appointed under section 45 of the Act and in order to ensure the timely preparation and publication of the Schedules referred to in rule 16 the said accounts shall be closed twice each year, viz., for the Schedule which is required by section 44 of the Act to be exhibited in Court on or before the 1st April up to the 31st December preceding, and for that which is required to be exhibited on or before the 1st October, up to the preceding 30th June.

(2) All General expenditure on account of estates, including that referred to in section 48 of the Act, which is not payable out of the Administrator Generals Commission but is debitable to estates under section 54, and which is neither separately provided for by rule 15, nor exempted from the operation of this rule by orders passed by the Government of India from time to time, shall be ascertained and settled by the auditors and distributed amongst the estates each half-year. As the actual amount of such general expenditure cannot be ascertained till after the close of the half-year, and some estates have to be closed before it is so ascertained, the amount to be distributed among the estates shall be the average amount of such expenditure during the preceding three years, and this amount is to be distributed amongst the estates by way of a percentage based upon the average value of the assets realised in respect of all estates during the same period. The percentage so determined shall continue the same till it is found necessary to alter it owing to any considerable change in the amount of such general expenditure, or in the average value of the assets collected each half-year.

(3) The Administrator General shall have the local accounts of zamindaris in his charge and the accounts of any firm or business carried on by him on behalf of and belonging to any estates in his charge audited from time to time either by private

auditors or, with the previous approval of the Government of India, by the auditors appointed under section 45 of the Act. When the accounts of a Zamindari or business accounts are audited, the whole expense of such audit shall be debited to the estates concerned.

THE FIRST SCHEDULE.

(See Rule 2).

I. *Cash Book*.—This book shall contain full particulars of all daily transactions in cash, Government and other securities and shares, there being separate columns on the debit and credit side for all receipts and payments made in cash, or through the Bank, and for all transactions in Government or other securities and shares. This book shall be balanced at the close of each day and then be laid before the Administrator General, who will sign it after checking the entries and satisfying himself that the balance is correct.

II. *Ledgers*.—(a) *General Estate Accounts Ledgers*.—Separate Ledger account for each estate under charge of the Administrator General and of each separate Share Account opened in any estate shall be kept, and each ledger account shall contain a full and detailed account of every transaction whether in cash, Government or other securities or shares, and the Ledger Account in each estate shall be posted up daily.

(b) *Commission Account Ledger*.—This ledger shall show the amount of commission and fees earned by and paid to the Administrator General and the amount paid from time to time by the Administrator General to the Government of India on account of such commission and fees, and shall be daily posted up from the commission vouchers and entries in the Cash Book.

(c) *Dividend Account Ledger*.—This ledger shall show in detail amounts transferred to the credit of this account in each estate as from the 1st January, 1902, and a subsidiary ledger will also be kept which will show the transactions of each estate separately and the names of creditors, the amounts of their respective claims, and amounts paid out with the names of the creditors to whom payment is made. The ledger shall also show particulars of any transactions in Government securities purchased or sold in connection with this account.

(d) *Old Dividend Account Ledger*.—This ledger shall be similar in form to that provided for in the case of the Dividend Account, but shall only include the accounts of estates in which transfers were made to the Dividend Account prior to the 1st January, 1902, and a subsidiary ledger shall similarly be kept in connection with this account which will show the transactions in each estate separately and the like particulars to those provided for in the subsidiary ledger to be kept in connection with the Dividend Account.

(e) *Security Ledger*.—This book shall show particulars of all securities of whatsoever nature, received by the Administrator General or purchased by him, and shall show his dealings therewith. The account of each estate shall be kept separately.

(f) *Sundry Estates Deposit Account Ledger*.—This book shall show particulars of all amounts deposited with the Administrator General whether in securities or otherwise in each estate and whether by tenants or employees, and the account shall contain entries of all interest realised on such securities and particulars of all payments made out. There shall also be kept under this head subsidiary ledger showing the account of each depositor in each state.

(g) *Miscellaneous Ledger*.—This ledger shall contain entries relating to the following accounts :—

(1) *Advertising account*.—Containing particulars of all sums received and disbursed on account of advertisements in respect of certificates granted under the provisions or section 36 or 37 of Act II of 1874.

(2) *Petty Receipts of Closed Estates Account.*—Containing entries of all sums transferred from general estates to this account and payments made thereout.

(3) *House Property Department Account.*—Containing entries of all sums credited to this account from estates and payments made thereout.

(4) *Filing Fee Account.*—Containing entries of all sums transferred from the general estates account and payments made thereout.

(5) *Income tax account.*—This account shall contain particulars of amounts deducted on account of income tax from salaries of estate employees and of amounts paid over to the Income Tax Collector.

(6) *Registration fee and Postage Account.*—Showing entries of all sums realised or received by the Administrator General on account of registration fees and postage of letters addressed to beneficiaries and others and of all sums paid thereout.

Note.—All ledger accounts must be posted up daily and closed half-yearly on the 30th June and 31st December and the balances carried forward to new account, but when the administration of any estate is completed and closed, the ledger account of such estate shall also be closed when the final closing order is carried out.

III. *Receipt Book.*—In this book shall be entered in an annual consecutive series particulars of all sums of money other than house rents received by the Administrator-General in cash, by cheque or other paper representing money, and of all government securities, debentures, Bank or other shares made over to him in course of administration. Each entry in respect of which a receipt is granted shall contain the material portion of such receipt, which shall bear the same number as the entry, and the entry shall be compared with the receipt and initialled by the Administrator General at the time of his signing the receipt. When a receipt is granted, a note shall be made, if necessary, against the entry to that effect and reference made to the Challan Books, Money Order Register or such like where full particulars of such receipts are recorded. All entries in this book shall be initialled daily by the Administrator General at the time he checks the entries in the Cash Book and signs the cash balance.

IV. *Bills Receivable Book.*—This book shall contain full particulars of all drafts or account sales payable on demand or otherwise, and the entries shall be made in a monthly consecutive series of numbers. Columns shall be provided to show the date of realisations, and the actual amount realised in the case of each of such drafts, etc., and such columns shall be written up on the date of realisation and the entries therein shall also be initialled daily by the Administrator General at the time he checks the entries in the Cash Book and signs the cash balance.

V. *Registers.*—

(i) *Account Registers.*—

(a) *Distribution Register.*—This book shall show the manner in which an estate has been wound up and also particulars of accounts rendered to beneficiaries and others.

(b) *Delivery Register.*—This book shall show particulars of all accounts filed in Courts.

(c) *Advance Register.*—This book shall contain particulars of all advances made to solicitors, contractors, managers of zamindari properties, or others, and columns shall be provided for the purpose of showing how and when such advances have been adjusted.

(d) *Currency Note Register.*—This register shall contain the numbers and necessary particulars of all Government currency notes of the value of Rs. 50 and upwards which pass through the office of the Administrator General.

- (e) *Estates transferred to Government Register*.—This register shall contain particulars of the assets of all estates transferred and paid to the Comptroller General, under the provisions of section 62 of the Act, and shall show the dates on which such transfers and payments are made.
- (f) *Remittance Register*.—This register shall contain particulars of all Remittances made to the India Office on account of estates in the hands of the Administrator General, and on receipt of the discharge from beneficiaries or other persons an entry should be made showing the date of such discharge.
- (ii) *Security Registers*—
 - (a) *Security Deposit Register*.—This book shall contain full particulars of all Government securities and shares or other securities of whatsoever nature which are deposited in the Bank of Bengal for safe custody.
 - (b) *Security Withdrawal Register*.—This register shall contain full particulars of all Government securities, Bank shares, debentures, shares in public companies, or other securities belonging to any estate withdrawn from the Bank of Bengal, and shall show the date of each withdrawal. Each entry in this register shall be signed by the Administrator General at the time he signs the application for withdrawal, and the date on which the securities are received from the Bank shall be also noted against each entry.
 - (c) *Security Splitting Register*.—This book shall contain full particulars of all Government security sent to the Public Debt Office, Bank of Bengal, for purposes of splitting, renewal, etc., and shall show the date on which such securities or their equivalent are received back. This register shall also show particulars of any other shares sent for any purposes to the office of issue.
 - (d) *Security Enfacing Register*.—This register shall contain full particulars of all Government securities sent to the Public Debt Office, Bank of Bengal, for purposes of being enfaced for payment of interest in England or elsewhere in India and shall also show the dates on which such securities are returned.

VI. *Administration Register*.—This book shall be in the nature of a General Index to the other books kept in the Department and shall contain the names of all estates dealt with under consecutive serial numbers, date of grant of Probate or Letters of Administration, date when time allowed in statutory advertisement for creditors and others expires, reference to Asset Book, Inventory Book, Claim Book and similar information.

VII. *Asset Book*.—This book shall contain full particulars in connection with the administration of each estate and *inter alia* shall show date and place of death of the deceased, date of grant of probate or letters of administration; date and papers in which statutory notice to creditors and others has been published, a list of the assets of the estate as set out in the petition for the grant, of all other assets as the Administrator General obtains information respecting them and their estimated value and the names and addresses of the next-of-kin and legatees. The actual value of assets when realised shall also be shown and the date of realisation thereof, and also the total amount of the claims admitted and registered. As soon as a closing order in an estate is passed a copy of it shall be entered in this book signed by the Administrator General and the Deputy Administrator General. All entries made in this book shall also be signed by the Administrator General or the Deputy Administrator General.

VIII. *Claim Book*.—In this book shall be entered a list of all claims preferred by creditors against each estate. The entry in respect of each creditor shall show his name and address, and any change of address subsequently notified to the Administrator General, the amount of the claim preferred, whether the claim has been admitted or not, and if admitted the amount so admitted and registered, the date of payment and whether the admitted amount is paid in full or otherwise. The entries in this book at the time each claim is dealt with and admitted or disallowed shall be initialled by the Administrator General, and the entries relating to the payment of the claims shall be initialled by the Chief Accountant and shall show the date of each payment. (See Rule VII, *supra*).

IX. *Inventory Book*.—This book shall contain a list of all moveable assets other than Government securities, cash debentures, shares or other paper representing money, received as belonging to each estate at the time the Administrator General takes charge thereof. The original list or inventory prepared and signed by the Administrator General's representative when taking charge of such assets and countersigned if practicable by the representative of the deceased from whose charge or possession the assets are received or a true copy thereof signed by the Administrator General should be passed into this book. The valuation if and when made by experts of all such moveable assets shall also be posted in this book and provision shall be made for the necessary entries as to how such assets are disposed of. The receipts of all articles included in such list and made over by the Administrator General to any person or expert for the purpose of the valuation or safe custody or other like purposes shall be taken either in such book itself or on a separate form to be afterwards posted into the Book. All entries relating to the receipt or disposal of assets entered in this book shall be signed or initialled by the Administrator General.

X. *Military Estates Register*.—This book shall show particulars of each estate transferred to the Administrator General under section 65 of the Act and shall show *inter alia* the name of the estate, date of transfer to the Administrator General, date of grant, or, if no grant is necessary, date on which the Administrator General takes charge under section 37 of the Act, and also the date on which the closing order is passed.

XI. *Register of House Rent Bills*.—This book shall contain the following particulars :—Name of Estate, particulars of property, name of tenant, as to whether tenant has a lease or not, rent payable, serial number of rent bills, columns showing amounts realised and date of realisation, and columns showing amount of arrears due at the commencement and end of each month. The entries in this book shall be initialled by the Deputy Administrator General at the time the rent bills are signed, and all entries showing realisation shall likewise be initialled.

It shall be optional with the Administrator General to keep a separate register for any particular estate.

XII. *Register of Tax Bills*.—This register shall contain entries relating to all taxes payable by the Administrator General and realisable by him from tenants, similar to those contained in the Register of House Rent Bills, and the procedure to be followed regarding the entries in this book shall be the same as prescribed in the case of that register.

XIII. *Zamindari Accounts*.—The account of each estate owning zamindari property shall be kept separate and distinct in the Zamindari Department, and all books, accounts and documents kept in connection with such property shall be in the forms prescribed for the time being and in use by the Court of Wards.

N.B.—The following rules that were in force, and which dealt with the Administrator General of Bengal, prior to the notification of May 1910, are herewith attached. The forms referred to therein are not reproduced.

Rules of Business.

Rule. I. The Administrator General shall keep the following accounts and statements Nos. 1 to 17 :—

No. 1.—Asset book, being a list of the assets of each estate as the Administrator General obtains information respecting them. Form I annexed. The asset book should be signed by the Administrator General as each entry is made in it.

No. 2.—Inventory book, being a list of property received as belonging to each estate at the time the Administrator General takes charge thereof. This list should be a true copy of the original inventory prepared and signed by the Administrator General's representative, when taking charge of the property, and countersigned if possible, by the representative of the deceased or other person from whose charge or possession the property is received. The inventory book should be signed by the Administrator General and the disposal of the effect should be entered in proper columns under the initials of the Administrator General.

No. 3.—Cash book, showing the daily transactions in cash and through the Bank in separate columns as per Form 2 annexed.

No. 4.—Receipt Book, in which there will be registered in an annual consecutive series of numbers all receipts granted by the Administrator General for cash or Government Securities or other paper representing money which will be fully detailed in the receipt book, Form 3 annexed. The receipt book will be signed by the Administrator General at the time of signing the original receipts for issue and after comparison therewith.

No. 5.—Ledger of estate accounts showing a detailed debit and credit of items on account of such estate in Form 4 annexed.

No. 6.—Claim Registry Book, in which shall be registered claims preferred against each estate, Form 5 annexed.

No. 7.—Register of house-rent bills, in which the particular of every house rent bill should be entered, and the entry initialled by the Administrator General as he signs the bill, Form No. 6. The Columns of this register showing the particulars of realizations should be written up daily from the cash book.

No. 8.—Commission book, Form No. 7, showing the amount collected and also the amount distributed on account of each estate monthly with the rate and amount of commission due to the Administrator General.

No. 9.—Bills Receivable Book for entering drafts or accounts sales at sight or date, Form No. 8. The entries in this book should be initialled by the Administrator General. The columns showing the particulars of realizations should be written up daily from the cash book.

No. 10.—Register of remittances to the India Office, London, in Bank Bills, Form No. 9.

No. 11.—Register book of all accounts delivered from the Office of the Administrator General, giving particulars as in Form No. 10.

No. 12.—Memorandum of accounts filed in the High Court by the Administrator General's Office. Form. No. 11.

No. 13.—An account book of all Bank shares and Government and other Securities deposited in the Bank of Bengal or retained in the Administrator General's Office, Form No. 12.

No. 14.—An account-current of all Government securities sent for renewal or otherwise to the Public Debt Office, and of all shares or other securities sent for any purpose to the Office of Issue.

No. 15.—Schedule of money bonds or other securities received by the Administrator General on account of the estates under his charge together with the payments there-out and the balances in hands, prepared for each half-year under S. 44 of Act II of 1874, Form No. 13.

No. 16.—Schedule of balances of administration paid over by the Administrator General to the persons entitled to the same, prepared for each half-year under S. 44 of Act II of 1874, drawn up as per Form No. 14

No. 17.—Account of Audit fund composed of the interests of funds invested in Government securities under Clause III, Rule III.

Rule II. Of the foregoing documents, the cash book should exhibit in detail the daily receipts and issues of cash, Government Securities, etc. It shall be balanced at the close of each day and then laid before the Administrator General, who will sign it after checking the entries and satisfying himself that the balance is correct.

Rule III. (1) The ledger account of each estate must show the transactions on its behalf, not only in cash, but also in Government Securities and Bank and other shares.

(2) Whenever the cash balance belonging to any estate shall amount to Rs. 500, after providing for ascertained current demands, it shall be invested by the Administrator General in Government Securities.

(3) The Administrator General may from time to time invest in Government Securities any portion of the balance standing to his credit in the Bank of Bengal. The investment should be made in favour jointly of the Administrator General and the Comptroller General, *ex-officio* and the interest arising from the investment should be carried to credit of a fund to be called the Audit Fund.

(4) The Administrator General may from time to time as he thinks fit, with the concurrence of the Comptroller-General, authorise the sale of any portion of the Government Securities belonging to the Audit fund.

Rule IV. The Administrator General shall not retain in his hands a larger sum in cash than Rs. 5,000; any excess beyond this amount shall be lodged to his credit in the Bank of Bengal.

Rule V. Every payment charged in his general cash account shall be supported by a corresponding voucher which should be passed for payment under the signature of the Administrator General.

Rule VI. For the purpose of remitting to the India Office any sum of money payable or belonging to any person resident in Europe, or in other cases when such remittances are required, any Administrator General of Bengal hereafter appointed under S. 5 of the Act shall purchase bills of exchange payable in London at a time not more than six months from the date thereof drawn by such banks or firms as the Governor General in Council may from time to time approve in their behalf. Every approval of a Bank or firm for the purposes of this rule shall be given by an order in writing signed by a Secretary to the Government of India, and shall continue in force for a period of one year from the date thereof, or until revoked within such period by a like order.

(Note.—During the tenure of the present incumbent (Mr. Broughton) remittances on account of parties in Europe to the treasury at the India Office shall be made by Government Bills at the rate of Exchange annually agreed upon with Her Majesty's Government for advances made in India).

Rule VII. So long as remittances are made on account of persons in Europe through the Government of India at the rate of exchange annually agreed upon with Her Majesty's Government for the repayment of advances made in India, the Administrator-General should deposit the required amount to credit of the Government account

at the Bank of Bengal, accompanied by a list in the form annexed (No. 15), which will be receipted by the Bank and filed in the Administrator General's office. Three copies of this list will, at the same time, be forwarded to the Comptroller General.

Rule VIII. All Government Securities and Bank or other shares coming into possession of the Administrator General shall forthwith be lodged in the Bank of Bengal for safe custody, except in cases in which it may be necessary for him to retain them for a temporary purpose.

Rule IX. (1) The accounts of the Administrator General shall be audited by the Auditors appointed under S. 45 of Act II of 1874; and, in order to the timely preparation of the two schedules which are provided for by S. 44 of that Act, the said accounts shall be closed twice each year, *viz.*, for the schedule which is required to be exhibited in Court on or before the 1st of April, up to the 31st December preceding, and for that which is required to be exhibited on or before the 1st of October up to the preceding 30th of June.

(2) The expenses of audit, etc., shall be divided among the whole of the estates concerned, the portion falling upon estates with balances of less than Rs. 500 being, however, defrayed, as far as may be, from the Audit fund formed for that purpose under the provisions of clause 3 of Rule III. If the audit fund shall be more than sufficient to defray the portion of expenses of audit, etc., falling upon estates with balances of less than Rs. 500, the surplus shall be applied equally towards defraying the expenses of audit, etc., to be born by estates with balances of more than Rs. 500.

(3) If in any case, after deducting the amount to be defrayed from the Audit Fund, the balance of an estate shall be below the proportion of charges to be debited against it, such balance shall be written off the Administrator General's books, and after the amount of balance thus written off has been deducted from the total amount of charges, the balance of such charges shall be divided among the remaining estates as prescribed above.

(4) The following charges may be met from the audit fund besides the cost of audit:—

(a) The cost of preparing and publishing the schedules prescribed by S. 44 of the Act II of 1874 and Rule XII (c) to the amount sanctioned by the Government of India in each case.

(b) Remuneration to the Bank for the custody of Government securities (Rs. 200 per mensem sanctioned in Bengal).

(c) Office Postage.

(d) Office rent of Rs. 350 per mensem during the incumbency of Mr. Broughton.

(e) Cost of stamps on cheques.

(f) All charges on account of printing and stationery.

If the balances at credit of the Audit Fund prove insufficient to meet the expenditure (a) to (f), the fact should be reported in each case for the orders of the Government of India in the Home Department.

Rule X. A rate of Rs. 20 may be levied from each estate as it comes into the hands of the Administrator General to meet the cost of ordinary advertisement connected with the receipt of the estate by the Administrator General and the declaration of dividends. Extraordinary advertisements relating to the letting of houses advertising for the next of kin creditors, etc., are to be charged to the estate concerned. The rates so levied should be carried to a separate advertising account, from which the cost of all ordinary advertisements should be met.

Rule XI. A. It is open to the Administrator General, under S. 32 and the explanation of S. 34 of Act II of 1874, to transfer to a separate account styled "Dividends payable account" the total amount of all registered and admitted claims against an estate, and all subsequent payments on account of such claims shall be debited to the "Dividends payable account."

B. The details of the receipts and payments of the "Dividends payable account" will be recorded in a subsidiary ledger which will be balanced at the close of each half-year for agreement with the balance of the consolidated account in the general ledger.

C. At the close of each half-year the Administrator General will publish in the *Calcutta Gazette* a schedule shewing, in detail of estates, the amount of dividend balances remaining unpaid. See Henderson on Succession, Alex. Kinney, 3rd Ed., 1909, pp. 444 to 446.

(2) **Remittances to India Office by Administrator General, No. 5519-A, dated the 16th October, 1902.**

In exercise of the power conferred by S. 57, clause (b), of the Administrator General's Act, 1874 (II of 1874), the Governor General in Council is pleased to direct that the following rule shall be substituted for the rule published with the Notification of the Government of India in the Finance and Commerce Department, No. 2712, dated the 30th August, 1878, namely :

Rule:—For the purpose of remitting to the India Office any sum of money payable or belonging to any person resident in Europe or in other cases when such remittances are required, the Administrator General of Bengal shall purchase Bills of Exchange payable in London at a time not more than six months from the date thereof drawn by such banks or firms as may be selected from time to time by or under general or special orders which the Governor General in Council, may make in this behalf.

(See Gazette of India, 1902, Pt. I, p. 753.)

II.—MADRAS.

N.B.—The forms referred to in the following Rules are not reproduced.

(1) **Rules for the guidance of the Administrator General of Madras in the discharge of his duties.**

Notification, Ootacamund, July, 6, 1898.

No. 299.—Under the provisions of section 57 of the Administrator General's Act II of 1874, and in supersession of all previous notifications on the subject, His Excellency the Governor in Council is pleased to make the following rules for the guidance of the Administrator General in the discharge of his duties :—

Rule I:—The Administrator General shall keep the following accounts and statements :—

(1) Inventory book or a list of property received as belonging to each estate at the time the Administrator General takes charge thereof (Form No. 1).

(2) Asset book or list of the assets of each estate as the Administrator General obtains information respecting them with date of realization thereof (Form No. 2).

(3) Cash book in which shall be entered in separate columns the daily receipts and issues of cash, Government securities and shares on account of each estate; to be balanced daily (Form No. 3).

(4) Receipt book in which all cash, Government securities and shares shall be entered, a series of consecutive numbers for the year being printed both on the receipts and on their counterfoils (Form No. 4).

(5) Receipt book for all documents having a money value other than Government securities and shares containing a series of consecutive numbers for the year printed both on the receipts and counterfoils (Form No. 5).

(6) Account current with each separate estate showing detailed debit and credit items and every transaction whether in cash, Government securities or shares (Form No. 6).

(7) Account current headed "creditors payable account" showing all unpaid dividends set apart for creditors whose claims are admitted; to be balanced half-yearly (Form No. 7).

(8) Claim registry book in which shall be registered all claims preferred against each estate (Form No. 8).

(9) Account current book with the Bank of Madras (Form No. 9).

(10) Commission book showing the amount collected and also the amount distributed in each month on account of each estate; balanced half-yearly (Form No. 10).

(11) Bills Receivable Book for entering account sales or drafts on account sales (Form No. 11).

(12) Register of remittances in which shall be noted all remittances made to the India Office, London (Form No. 12).

(13) Memorandum of all accounts filed in the High Court (Form No. 13).

(14) Security book in which shall be entered all Government and other securities and shares held on account of each estate and date of realization of interest in each half-year (Form No. 14).

(15) Schedule of money, bonds and other securities received on account of the estates under the charge of the Administrator General, together with the payments made thereout and the balances in hand prepared for each half-year under S. 44 of Act II of 1874 (Form No. 15).

(16) Schedule of all balances of administrations paid over to the persons entitled to the same; prepared for each half-year under S. 44 of Act II of 1874 (Form No. 16).

(17) Rent book in which particulars of rent received each month with the dates of such receipt shall be entered (Form No. 17).

(18) Stock book in which shall be entered all jewellery, trinkets, shares and other assets, not being cash or Government Securities, retained by the Administrator General in his possession or lodged in the Bank of Madras for safe custody or delivered to the parties entitled thereto (Form No. 18).

(19) Letters of Administration book containing names of estates with the dates of their grant (Form No. 19).

(20) Letter delivery book in which shall, be entered the names of the estates, the particulars of enclosures, if any, the names and addresses of persons to whom letters are sent (Form. No. 20).

(21) Postal despatch book similar to the letter delivery book, but containing in addition the amount of postage paid on letters (Form No. 21).

Rule II. Whenever the cash balance to the credit of any individual estate shall amount to Rs. 100 after providing for ascertained current demands, such cash balance shall be invested by the Administrator General in Government securities.

Rule III. All moneys coming into the hands of the Administrator General, except those invested under Rule II and those retained for current petty expenditure by the Administrator General, shall be deposited by the Administrator General in the Bank of Madras and shall form his current balance.

Rule III-A. Sums set apart to meet the claims of creditors, which have remained unpaid in the hands of the Administrator General for a period of fifteen years, shall be lodged for safe custody with the Accountant-General.

N.B.—The above rule (III-A) was added by Notification, No. 318, dated 18th July, 1899, published in the Fort. St. George Gazette, dated 1st August, 1899.

Rule IV. The Administrator General shall not retain in his hands a larger sum in cash than Rs. 1,000.

Rule V. Every payment charged in the Administrator General's cash account shall be supported by a corresponding voucher which shall be passed for payment under the initials of the Administrator General.

Rule VI. Remittances to the India Office, London, of sums of money payable or belonging to the persons resident in Europe, or in other cases when such remittances are required shall be made by purchasing Bills of Exchange payable on London on demand drawn by some one of such banks as the Governor in Council shall from time to time approve. Every approval of a bank or banks for the purpose of this rule shall be given by an order in writing signed by the Chief Secretary to the Government of Madras and shall continue in force until revoked by a like order.

Rule VII. All Government securities and bank or other shares coming into the possession of the Administrator General shall be endorsed in the name of the Administrator General of Madras and forthwith lodged in the Bank of Madras for safe custody, except in cases in which it may be necessary for him to retain them temporarily for any purpose.

Rule VIII. The Accounts of the Administrator General shall be audited half-yearly by the auditors appointed under Act II of 1874, and with the view of securing the timely preparation of the two schedules which are provided for by S. 44 of the Act, the said accounts shall be closed twice in each year, viz., for the schedules which are required to be exhibited in Court on or before the 1st April, on the 31st December next preceding that date, and for those which are required to be exhibited on or before the 1st October, on the 30th June next preceding that date.

III—BOMBAY.

N.B.—The various forms referred to in the following rules are not reproduced.

Rules for regulating the keeping of accounts and records by the Administrator General and for the guidance of that officer in the discharge of his duties.

Notn. No. 165, dated 13th January, 1887, B. G. G., 1887 Pt. I, p. 45—In exercise of the powers conferred by S. 57 of the Administrator General's Act, 1874, the Governor in Council is pleased to make the following rules for regulating the keeping of accounts and records by the Administrator General of Bombay, and generally for the guidance of that officer in the discharge of his duties (namely) :—

Records, Books and Accounts.

Accounts and other records to be kept by the Administrator General.

1. The Administrator General shall keep the following accounts, statements and other records (namely) :—

No. 1.—*Asset Book*, in which shall be entered in Form No. 1, hereto annexed, a list of the assets of each estate, as the Administrator General obtains information respecting the same. As each asset is realised or disposed of, the entry in this book regarding it shall be initialled by the Administrator General ;

No. 2.—*Inventory Book*, in which shall be entered in Form No. 2, hereto annexed, a list of property belonging to each estate at the time the Administrator General takes

charge thereof. The list shall, when practicable, correspond with an inventory originally prepared and signed by the Administrator General's representative when taking charge of the property, which said inventory shall, if possible, be countersigned by the representative of the deceased or other person from whose charge or possession the property is received. Particulars as to the disposal of the property shall be entered in this book in appropriate columns under the initials of the Administrator General;

No. 3.—*Stock Book*, in which shall be set forth in Form No. 3, hereto annexed, the jewellery, trinkets, shares and other assets, not being cash or Government securities belonging to each estate, kept temporarily by the Administrator General in his own possession ;

No. 4.—*Cash Book*, in which shall be entered in Form No. 4, hereto annexed, in separate columns, the daily receipts and issues of cash, Government securities and shares on account of each estate and the amount of commission charged daily in respect of each estate ;

No. 5.—*Subsidiary Cash Book*, in which shall be recorded in Form No. 5, hereto annexed, full details of the transfer, transactions, remittances to the India Office, refunds of Stamp duty, interest on Government securities, &c., entered in the Cash Book ;

No. 6.—*Ledger Accounts of Estates*, which shall contain in Form No. 6, hereto annexed, the separate and distinct accounts of each estate required by S. 43 of the Act and shall show in detail every debit and credit item and every transaction, whether in cash, Government securities or shares, relating to estate ;

No. 7.—*Ledger*, which shall show in Form No. 7, hereto annexed, in detail, every debit and credit item of the "Small Estates Account", the "Claims and Dividends Payable Account", and the "Audit Account" hereinafter prescribed ;

No. 8.—*Receipt Book*, which shall be in Form No. 8, hereto annexed, and in which there shall be registered, in an annual consecutive series of numbers, all receipts granted by the Administrator-General for cash or Government securities or other documents having a money value, detailed particulars of the cash or documents received being entered both in the receipts and in the counterfoils, which shall be kept in the Administrator General's office. Each counterfoil shall be initialled by the Administrator General at the time of signing the receipt to which it appertains and after comparison of the receipt therewith ;

No. 9.—*Rent Book*, in which particulars of rent received each month by the Administrator General on account of immoveable property in his charge shall be entered in the Form No. 9, hereto annexed, and at the close of each month, the total amount so received on account of each estate shall be shown together with the date of the corresponding credit in the Cash Book, the latter entry being initialled by the Administrator General ;

No. 10.—*Claim Book*, in which shall be registered in Form No. 10, hereto annexed, all claims preferred against each estate ;

No. 11.—*Commission Book*, in which shall be shown the total amount of commission received daily by the Administrator General, of which the particulars appear in the Cash Book ;

No. 12.—*Account Sales Book*, in which shall be noted from time to time in Form No. 11, hereto annexed, all money outstanding on account sales, together with particulars of the recovery of the same ;

No. 13.—*Register of Remittances*, in which shall be noted in Form No. 12, hereto annexed, all remittances made by the Administrator General to the India Office, London ;

No. 14.—*Register Book of Accounts*, in which all accounts delivered from the office of the Administrator General shall be registered with particulars ;

No. 15.—*Memorandum of Accounts and Inventories*, in which all accounts and inventories filed in the High Court by the Administrator General shall be registered in Form No. 13, hereto annexed ;

No. 16.—*Register of Deposits*, in which an account shall be kept, in Form No. 14, hereto annexed, of all Government and other securities deposited with the Bank of Bombay under Rule 9 and of all Cash Deposits made with Government under Rules 6 and 8 ;

No. 17.—*Renewals Memorandum*, in which a record shall be kept in Form No. 15, hereto annexed, of all Government securities sent for renewal or otherwise to the Public Debt Office and of all shares or other securities sent for renewal to the office of Issue ;

No. 18.—*Security Book*, in which shall be entered in Form No. 16, hereto annexed, a list of all Government and other securities and shares, &c., held by the Administrator General on account of each estate

No. 19.—*Purchase and Sale Book*, in which shall be entered in Form No. 17, hereto annexed, an account of all purchases and sales of Government securities and of all sales of shares and other securities by the Administrator General ;

No. 20.—*Interest Book*, in which shall be entered in Form No. 18, hereto annexed, a statement of interest due half-yearly on Government securities of the several loans held by the Administrator General ;

No. 21.—*Bank Book*, containing an account current of moneys deposited with and of all transactions made by the Administrator General through the Bank of Bombay ;

No. 22.—*Claims and Dividends Payable Book*, in which shall be recorded in Form No. 19, hereto annexed, a list of admitted claims against each estate when all the same have been adjusted, together with the amounts payable in respect of such claims, and whenever practicable the receipts of the payees thereof ;

No. 23.—*General Index Book*, which shall contain a list of all estates to which letters of administration have been granted to the Administrator General ;

No. 24.—*Administration Book*, in which shall be set forth in the Form No. 20, hereto annexed, a list of estates for the administration of which Administrator General applies for letters, with dates of grant, &c. ;

No. 25.—*Certificate Book*, in which copies of all certificates granted by the Administrator General under Ss. 36 and 37 of the Act shall be recorded ;

No. 26.—*Letter Book*, in which should be kept press copies of all letters despatched from the office of the Administrator General ;

No. 27.—*Letter Delivery Book*, in which there shall be entered the names and addresses of persons to whom letters are sent from the Administrator General's office by messengers with a column for the signature of the addressees or their agents ;

No. 28.—*Postal Despatch Book*, containing a memorandum of all letters sent from the Administrator General's office through the Post and of the postage paid thereon.

2. The Cash Book (No. 4) shall be balanced daily and be laid before the Administrator General, who, after checking the entries and satisfying himself that the balance is correct, shall affix his initials thereto.

3. With a view to securing the timely preparation of the schedules which the Administrator General is required by S. 44 of the Act to exhibit in the High Court, the accounts of the Administrator General shall be closed twice in each year, viz., for the schedules which are required to be exhibited in Court on or before the 1st April, or the 31st December next preceding that date, and for those which are required to be exhibited on or before the 1st October, or the 30th of June next preceding that date.

Monetary Transactions.

All payments to be supported by vouchers.

Cash balance in Administrator General's hands not to exceed Rs. 5,000.

4. Every payment charged in the Administrator General's general cash account shall be supported by a voucher, which shall be passed for payment under the initials of the Administrator General.

5. The Administrator General shall not at any time retain in his hands a larger cash balance than five thousand rupees; any excess above the said amount shall be lodged to his credit in the Bank of Bombay.

N.B.—No. 4824.—In exercise of the powers conferred by S. 57 of the Administrator General's Act, (II of 1874), the Governor in Council is pleased further to amend the rules for regulating the keeping of accounts and records by the Administrator General of Bombay and generally for the guidance of that officer in the discharge of his duties, published in Government Notification in the Financial Department, No. 165, dated the 13th January, 1887, by directing that, in Rule No. 5 of the said rules, for the word "thousand" the word "hundred" shall be substituted. (See Bom. Government Gazette, 1907, Pt. I, p. 1406.)

"6. The Administrator General may from time to time invest in Government securities any portion of the balance standing to his credit in the Bank of Bombay, or deposit in the Government Treasury any portion, not less in amount than five thousand rupees, of the said balance. He may also at any time, by written application to the Accountant General, draw out of the moneys so deposited in the Government Treasury such sum not less in amount than five thousand rupees, as he shall think fit."

N.B.—Substituted for old rule (6) by Notn. No. 3280, dated 24th September, 1895. See Bombay Gazette for 1895, Pt. I, p. 976.

Balance of any estate amounting to or exceeding Rs. 500 to be invested in Government securities.

7. Whenever the cash balance of any estate, after providing for ascertained current demands against such estate, amounts to or exceeds five hundred rupees, it shall be invested by Administrator General in Government securities.

Balance of any estate, if not exceeding Rs. 500, to be invested or deposited in the Government Treasury.

"8. If the balance of any estate, after providing as aforesaid, amounts to less than five hundred rupees, the Administrator General may either invest such balance in Government securities or deposit it in the Government Treasury."

N.B.—Substituted for the old rule (8) by Notn. No. 3280, dated 24th September, 1895.

Safe custody of Securities.

Securities to be lodged for safe custody in the Bank of Bombay.

9. All Government securities and Bank or other shares coming into the possession of the Administrator General shall forthwith be lodged by him in the Bank of Bombay for safe custody, except in any case in which it may be necessary for him to retain them temporarily for any purpose such as drawing dividends, &c.

The Audit Fund.

Audit Fund, of what to consist.

"10. Interest accruing on moneys invested by the Administrator General under Rule 6 shall be credited by him to a fund which shall be called the 'Audit Fund'."

N.B.—Substituted for the old rule (10) by Notn. No. 3280, dated 24th September, 1895.

What charges may be debited to audit fund.

11. The following charges may be met from the Audit Fund, (*viz.*) :—

- (a) the expenses of audit under Part IV of the Act ;
- (b) the cost of preparing and publishing the Schedules A to E referred to in the Rules 17 and 18 (inclusive of all minor charges connected therewith for stationery and the like), not exceeding such amount as shall from time to time be sanctioned by Government ;
- (c) The fees or other remuneration, if any, payable by the Administrator General to the Bank of Bombay for the custody of Government securities;
- (d) the cost of the record-books, account books, stationery and printing necessary for the Administrator General's office ;
- (e) postage charges incurred by the Administrator General for his official purposes ;
- (f) the cost of stamps on cheques drawn by the Administrator General in his official capacity.

12. If the balance at credit of the audit fund is at any time more than sufficient to meet the charges mentioned in Rule 11, any excess balance may be invested by the administrator General in Government securities, and the interest which accrues on such investments shall be credited to the audit fund.

Excess balance of audit fund how to be dealt with.

Temporary purposes for which the audit fund may be used.

13. The Administrator General may also make use of the audit fund for the following purposes, (*viz.*) :—

- (a) if the amount of certain outstanding charges which have to be borne by an estate in his charge, cannot for a time be exactly ascertained, he may retain out of such estate a sum approximately sufficient to meet such charges, and the sum so retained may be temporarily credited to the audit fund, until payment thereof is made to the persons entitled to receive the same; and
- (b) if any money due to an estate in his charge cannot immediately be realized, as in the case of refunds of stamp-duty, &c., the approximate amount thereof may be temporarily advanced to the estate out of the audit fund, which shall thereupon be debited with such amount, and when the money due has been realized, the audit fund shall be re-credited with the amount advanced from it.

Separate Accounts.

14. The Administrator General may, subject to the provisions of S. 32 of the Act, carry over to a separate account, which shall be styled "the Dividends Payable Account", from the balance of any estate in his charge, assets equivalent to the aggregate amount of all registered and admitted claims against such estate; and all payments which he shall thereafter make on account of such claims shall be debited to the said Dividends Payable Account.

15. The Administrator General may also, subject to the provisions aforesaid, carry over to a separate account, which shall be styled "Small Estates' Account" the balance of every estate which he has deposited in the Government Treasury under Rule 8; and all payments which he shall thereafter make on account of any such estate shall be debited to the said Small Estates' Account.

Small Estates' Account.

Remittances.

16. For the purpose of remitting to the India Office sums of money payable or belonging to persons resident in Europe or in other cases when such remittances are required, the Administrator General shall purchase bills of exchange payable in London at a period not exceeding six months from the date thereof, drawn by some one of such banks or firms as the Governor in Council shall from time to time approve in this behalf. Every approval of a bank or firm for the purposes of this rule shall be given by an order in writing signed by a Secretary to the Government of Bombay and shall continue in force until revoked by a like order.

Remittances to the India Office how to be made.

Schedules.

17. For the better classification of the information, which by clauses (a) and (b) of S. 44 of the Act, the Administrator General is required to exhibit to the High Court and to publish in the Bombay Government Gazette half-yearly, the Administrator General shall embody the said information in the following four schedules, prepared, respectively, in accordance with Forms A to D, hereto annexed, (*viz.*):

Forms in which the schedules required by cls. (a) and (b), S. 44, of the Act, are to be prepared.

Schedule A, showing the money, bonds or other securities received by him on account of each estate in his charge and the payments thereout and the balances in hand at the close of the half-year;

Schedule B, showing the money, bonds or other securities transferred by him from each estate in his charge to the share or legacy accounts of the persons respectively entitled thereto, and the payments thereout and the balances in hand at the close of the half-year;

Schedule C, showing the estates in his charge of which the balances, being less than five hundred rupees each, have been deposited in the Government Treasury under Rule 8 and the opening balance, receipts, charges and closing balance of the Small Estates' Account for the half-year;

Schedule D, showing the balances of assets, which have been set apart to meet admitted claims against any of the estate in his charge and the opening balances, receipts, charges and closing balance of the Dividends Payable Account for the half-year.

Form in which the schedule required by cl. (c) of S. 44 of the Act is to be prepared.

18. The schedule which the Administrator General is required by a clause (c) of S. 44 of the Act to exhibit to the High Court and publish in the Bombay Government Gazette half-yearly shall be in Form E, hereto annexed.

Statement of assets liable to lapse to Government to be submitted by the Administrator General annually to the auditors of his accounts.

19. The Administrator General shall, at the audit of his accounts for the half-year ending on the 31st December of each year, submit to the auditors for verification a statement of assets liable at the close of the same year to be transferred under S. 62 of the Act to Government.

20. The Administrator General may, after the expiration of one year from the date of his taking charge of an estate, destroy any private papers, bills, receipts, memoranda, or other similar documents of no permanent value, which he has received along with such estate and which have not in the meantime been claimed by the next-of-kin or by any other person entitled thereto.

Destruction of unclaimed and useless private papers.

ACT IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

[Passed on the 25th February 1881].

WHEREAS Hindus, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1877, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Parsis should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindus, Muhammadans and Buddhists, and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows :—

Preamble.

1. This Act may be called "The Administrator General's Act, 1881":

Short title.

and shall come into force at once.

Commencement.

2. In Sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Parsi" shall be inserted.

Amendment of Sections 16, 17, 18 and 64 of Act No. II of 1874.

3. After section twenty-three of the same Act, the following section shall be inserted :—

New section inserted after Section 23 of same.

"23-A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay, to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Effect of probate or letters granted to Administrator General.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for Section 23 of same.

4. For Section twenty-eight of the same Act, the following section shall be substituted :—

“28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

“Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.”

5. [Amendment of sections 36 and 37 of same.] Repealed by the Probate and Administration Act, 1890, S. 11 (2), and the Repealing and Amending Act, 1891 (XII of 1891).

Amendment of Section 38 of same.

6. In Section thirty-eight of the same Act, for the words “such certificate” the words “certificate under Section thirty-six or thirty-seven” shall be substituted.

New section inserted after Section 55 of same.

7. After Section fifty-five of the same Act, the following section shall be inserted:—

“55-A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of Administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.”

New section inserted before Section 61 of same.

8. Before Section sixty-one of the same Act, the following section shall be inserted:—

“60-A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorised to administer or take) any person who is willing to be so examined by him regarding such question.”

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

ADMINISTRATOR-GENERAL'S ACT, 1874.

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THE
SUCCESSION (PROPERTY
PROTECTION) ACT, 1841.

(ACT XIX OF 1841)

(WITH THE CASE-LAW THEREON)

COMPILED AT
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SUCCESSION PROPERTY PROTECTION ACT, 1841.

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THE SUCCESSION (PROPERTY PROTECTION) ACT, 1841.

(ACT XIX OF 1841.)

PASSED ON THE 6TH SEPTEMBER 1841.

An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.

WHEREAS much inconvenience has been experienced where persons
Preamble. have died possessed of moveable and immoveable property, and the same has been taken upon pretended

claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession; And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit; And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property; And whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case; And whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators¹, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:

1. It is hereby enacted that whenever a person dies leaving property,

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended.

(Notes).

General.

(1) Act, where declared in force.

(a) This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), S. 3. **A**

(b) It has been declared in force in the Arakhan Hill District (with modifications and with the exception of S. 16), by the Arakhan Hill Districts Laws Regulation, 1874 (IX of 1874), Bur. Code. **B**

(c) It has been extended to Sindh by Bombay Act XII of 1866, S. 12. **C**

(d) It has been declared by notification under S. 3 (a) of the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely :—

The Taluqs of Bhadrachalam
and Rakapilli and the Rampa

Country	...	See <i>Gazette of India</i> ,	Oct. 4, 1879,	Pt. I.	p. 630.
Sindh	...	Do.	Dec. 4, 1880,	Do.	672.
West Jalpaiguri	...	Do.	Mar. 5, 1881,	Do.	74.
The District of Hazáribágh	...	Do.	Oct. 22, 1881,	Do.	597.
Do. Lohárdaga	...	Do.	Oct. 22, 1881,	Do.	508.
Do. Mánbhum	...	Do.	Oct. 22, 1884,	Do.	509.
Pargana Dhálbhum in the					
District of Singbhum	...	Do.	Oct. 22, 1881,	Do.	510.
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the Mirzapur District	...	Do.	May 31, 1879,	Do.	383.
Jaunsar Báwar	...	Do.	May 31, 1879,	Do.	382.
The Districts of Hazára,					
Pesháwar, Kohat, Bannu,					
Dera Ismail Khán and Dera					
Ghází Khan (Portions of the					
Districts of Hazara, Banu,					
Dera Ismail Khan and Dera					
Ghazi Khan and the Districts					
of Peshawar and Kekat now					
form the North West Frontier					
Province. See <i>Gazette of India</i> ,					
1901, Pt. I, p. 857					
and <i>ibid</i> , 1902, Pt. I, p. 575;					
but its application has been					
barred in that part of the					
Hazara District known as					
Upper Tanawal, by the Hazara					
(Upper Tanawal) Regulation					
(II of 1900, S. 3), Punjab and					
N.W. Code	...	Do.	Jan. 30, 1886,	Do.	48.
The District of Lahaul	...	Do.	May. 1, 1886,	Do.	301
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General—(Continued).

The District of Silhat ... See *Gazette of India* Oct. 4, 1879, Pt. I., p. 631
 It has been extended, under
 the same Act, to the Schedul-
 ed Districts of Kumaon and
 Garhwál ... Do. Nov. 4, 1876, Do. 606. D

- (e) It has been declared, by notification under S. 3 (b) of the above-mentioned Act, that Act I of 1846 is not in force in the Scheduled Districts of Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I, p. 667 and Gazette of India, 1898, Pt. I, p. 872. E

(2) Application of the Act and its construction.

Act XIX of 1841 empowers a District Judge to interfere with the ordinary rights of parties by means of a summary procedure, and the view which has always been adopted by this Court with reference to other similar Acts, or provisions of Acts of a similar nature, must be taken to apply to proceedings taken under its provisions, that is to say, before it can be held that a Court has jurisdiction it must be found that the provisions of law have been strictly complied with. 34 C. 929 (933) = 12 C.W.N. 65. F

(2-a) Intention of the legislature—Principle of the enactment.

It seems manifest from these provisions contained in Ss. 8, 13, 14, 17 and 18 of the Act that the intention of the Legislature was to furnish the Chief Civil Court of each district with executive powers, under which it could take prompt action in certain cases to prevent wrong dealing with the estates of deceased persons. The principle underlying the enactment is practically the same as that which forms the basis of section 145 of the Code of Criminal Procedure, though the one was designed to protect property and the other to preserve the peace. 2 N.L.R. 72 (75). G

(2-b) Act to be used only where exceptional grounds for prompt action exist.

- (a) The provisions of Act XIX of 1841 can only be legally applied under the very exceptional circumstances stated in the enactment where the Court is satisfied of the existence of danger to the property to be protected. 2 N.L.R. 72. H
- (b) The Act of 1841 is designed to protect property, but it is only to be used where exceptional grounds for prompt action are necessary to guard against misappropriation, waste, or neglect of the estates of deceased persons; and the last clause of the preamble distinctly states that it would be "very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit." It will be observed that during the half century which has elapsed since Act XIX of 1841 became law, the conditions against which it was directed, have been guarded against by several subsequent enactments. In Act I of 1877, S. 9, in the various Acts relating to the protection of the property of minors, in the Indian Succession Act, 1885, the Probate and Administration Act, 1881, the Succession Certificates Act, 1889, the provisions in the

General—(Continued).

Code of Civil Procedure for the appointment of a Receiver, and in the summary powers of Criminal Courts in cases of disputed possession over immoveable property, we find provisions which more or less overlap the provisions of Act XIX of 1841. Nevertheless that enactment still remains on the Statute Book. But it is necessarily one for use only in the most exceptional cases. 2 N.L.R. 72 (78). I

- (c) Thus it could never be properly used between two heirs of equal standing to disturb the possession of one, at the instance of the other, over property to which the possessor was admitted to have rights at least equal to the applicant claiming to be put in possession. 2 N.L.R. at p. 78. J
- (d) Nor could the Act be properly used to partition an estate between two brothers. 2 N.L.R. at p. 78. K
- (e) Nor can the Act be used to appoint a curator merely because there was a dispute between two undivided brothers. 2 N.L.R. at p. 78. L
- (f) Nor can it be used to avoid the expense of a regular civil suit. 2 N.L.R. at p. 78. M

(2-c) Courts exercising jurisdiction under the Act in Berar.

So far as Berar is concerned the original jurisdiction conferred by Act XIX of 1841 upon 'the Judge' is now vested in the District Judge, while the superior jurisdiction of the 'Sadar Dewany Adawlut' under the said Act is vested in the Court of Judicial Commissioner, Central Provinces. 2 N.L.R. 72. N

(3) Act has no application to a joint family governed by the Mitakshara Law.

- (a) A Hindu governed by the Mitakshara Law died leaving him surviving a widow, a daughter by a previous wife, and two brothers. On his death the brothers applied under Act XIX of 1841 to the District Judge for the delivery of possession of the deceased's property on the ground that it formed part of the property in the joint names of their deceased brother and themselves. The District Judge granted their application. The widow contested this claim, and afterwards applied to the High Court to have the order of the District Judge set aside.

Held, that, on the death of a member of a Hindu family, governed by Mitakshara, there is only an accession by survivorship to his property by the other members, and no succession by inheritance; and that the provisions of Act XIX of 1841 had no application to such a case, and that the District Judge should not have taken any action under this Act, but have left the parties to seek their remedy by a proper suit for the establishment of their title. 34 C. 929=12 C.W.N. 65 (6 W.R. Mis. 53, F.). O

- (b) *Held*, further, that the District Judge acted in the present case illegally and with material irregularity; and that the petitioner was prejudiced thereby. 34 C. 929=12 C.W.N. 65. P

- (c) *Held*, also, that the High Court had full jurisdiction in revision, to set aside the order of the District Judge. (*Ibid.*) Q

- (d) The following observations of Brett and Coxe, JJ. are worthy of being noted as throwing light on the above point:—In the first place it has been argued that the provisions of Act XIX of 1841 cannot apply to the case of a family governed by the Mitakshara law. Section 1 of the Act provides that whenever a person dies leaving property, moveable or

General—(Continued).

immovable, it shall be lawful for any person claiming a right by succession thereto or to any portion thereof, to make application to the Judge of the Court of the District where any part of the property is found or situate for relief, either after actual possession by another person or when forcible means of seizing possession are apprehended. It is argued that on the death of a member of a Hindu family governed by the Mitakshara law the other members take the property left by the deceased by survivorship and not by succession. There is in fact no passing of the property from the deceased to anybody else; there is only an accession to the property of the survivors and no succession by inheritance. R

- (e) It is pointed out that in the present case if there could be held to be any succession at all it would be succession by the widow and daughter as heirs, who would have succeeded by inheritance. In our opinion this contention is sound, and in the present case, the Act cannot be taken to have any application. 34 C. 929 (932) = 12 C.W.N. 65. S

(4) Preamble, Scope of the—Application of the Act.

The power of summary adjudication vested in the Zillah Judges by this Act affords an extraordinary remedy, and is intended to meet extraordinary cases.

The circumstances in which the Civil Courts are empowered to exercise this jurisdiction and the circumspection required from the Judges who exercise it are set forth in the Preamble to the Act.

The words of the preambles very clearly indicate that the Act was passed in order to meet cases of wrongful possession or disturbance of possession under *pretended* claims of right, and to discountenance the employment of *force* and *fraud*. Also, that the decision by the Judge was not to be of such a nature as to supersede the necessity of a regular suit; and, *thirdly*, that the applicant was to be left to his ordinary remedy by suit, unless he showed that, if so left, he was likely to be materially prejudiced. And the provisions enacted correspond very closely with those recitals. 6 W.R. Mis. 53 (55). T

(5) Ss. 3 and 4—Scope of.

- (a) From the provisions of Ss. 3 and 4 of the Act, it is clear that, before the Judge could lawfully issue the citation, he had to be satisfied upon the four points specified, and upon all of them, the applicant was to show him strong ground of belief, and otherwise he was not to proceed.

A slight case would not be sufficient. The title and bona fides of the applicant must be *prima facie* clear; it must also be manifest that the party complained of had no lawful title to possession, and that, if the applicant were referred to a regular suit, he would be a serious sufferer, and by the risk of waste or misappropriation, or by his inability to prosecute his rights when out of possession. 6 W.R. Mis. 53 (56). U

- (b) After making the above general observations, on the general scope of the Act, and as to the cases in which it ought to be applied, his Lordship Jackson, J., proceeded to apply those principles to the facts of the case and observed as follows:—

“Now, what, in the present instance, was the case submitted to the Judge of Gya? Certainly neither force nor fraud—neither a likelihood of misappropriation, nor an inability to proceed by regular suit.”

General—(Continued).

The case was simply one of two brothers living under the Mitakshara Law, possessed of equal moieties of property, moveable and immoveable, of immense extent, of whom one died leaving a widow and a daughter. It seems to have been admitted that the brothers had lived in separate houses, and had separately collected their shares of rent. But the surviving brother alleged that these circumstances did not constitute a separation in estate according to Hindu Law, and that consequently he was entitled. And it was vaguely asserted that the widow in possession was likely to commit waste.

Now, here it was quite manifest that the widow was holding her deceased husband's estate under a state of facts which the Civil Courts might very possibly interpret as giving her a valid right to retain it. The applicant had already in his own right very extensive property equal, or nearly equal, to that which he was claiming, and nothing restrained him from bringing a regular suit; and the suit once instituted, he could have immediately obtained, on showing cause for it, an injunction under the Code of Civil Procedure.

Beyond all doubt therefore, this was a case in which the Judge, on hearing the petition, ought to have refused to act. 6 W.R. Mis. 53 (56). Y

(6) The considerations that led to the passing of this Act have become greatly less cogent after the passing of C.P.C.

(a) Whatever be the need for summary proceedings like the present which may have existed in 1841, things have greatly altered in the quarter of a century which has elapsed since the passing of the Act, and the considerations which led to its enactments are greatly less cogent under the Civil Procedure Code. Formerly, it was notorious that, civil suits were protracted, in one shape or another, frequently for a lifetime, whereas now the average duration of suits is probably less than a year, and appeals to the Highest Court in the country are decided with equal expedition. 6 W.R. Mis. 53 (56). W

(b) Where a party who is cited under S. 4, and who is competent to demure to the proceedings on the ground that the Judge did not appear to have been satisfied upon the points specified in third section, accepts the citation, waiving that objection, and submits to the Judge's determination of the rights to possession, it would not be open to such party afterwards to say that he was improperly cited. 6 W.R. Mis. 53 (56). X

(7) Scope of Act—Whether S. 1 concerns a case where the claim relates to an undivided share of the estate left by the deceased.

(a) S. 1 of Act XIV of 1841 provides that whenever a person dies, leaving property moveable or immoveable, it shall be lawful for any person claiming a right of succession thereto, or to any portion thereof, to make an application to the Judge of the Court of the District where any part of the property is found or situate, for relief, either after actual possession has been taken by another person, or when forcible means of taking possession are apprehended. It is manifest from the language used by the Legislature that an application may be made under the Act, even when the applicant claims a right by succession to a portion only of the property left by the deceased. This

General—(Continued).

- appears sufficient to cover a case in which, as here, the claim relates to an undivided share of the estate left by the deceased. We may take a concrete illustration: If the original owner leaves two sons A & B, and A seizes the entire estate left by his father, it is competent for B to apply under the Act, though he claims only one-half share of the estate; in other words, the Act is not limited in its application to cases, where the dispute arises between two persons, each of whom claims title by succession to the entire estate. 6 Ind. Cas. 260 (261). **O**
- (b) The preamble recites the mischief for a removal of which the Act was intended, and states that inconvenience had been experienced when persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claim of right by gift or succession, and the parties affected have been driven to regular suits, vexatiously protracted, for the enforcement of their just rights. The contention that this contemplates cases where the whole of the moveable and immoveable property left by the deceased has been taken upon a pretended claim of right by gift or succession, though a possible construction of the language used by the Legislature, yet the other interpretation, namely, that the preamble covers cases where the property has been seized in whole or in part, is by no means inadmissible. In fact, to return to the concrete case taken above, if A seizes the whole of the estate left by his father to the exclusion of his brother B, in so far as a half share is concerned there is no dispute that the possession is lawful; it is only in respect of the other fact that it can be suggested, that A has taken it upon a pretended claim of right by gift or succession. It is fairly clear, therefore, that a restricted interpretation need not be put upon the preamble. It is manifest, however, that even if the preamble were construed as above contended for, so as to cover only cases where upon the death of the original owner, the whole of his estate is unlawfully seized in assertion of a pretended claim, it cannot possibly restrict the plain meaning of the 1st section of the Act. 6 Ind. Cas. 260 (261). **P**
- (c) Hence an application may be maintained when it is alleged by a person who claims a share in the estate left by the deceased, that that share has been seized by other persons in assertion of a pretended claim of right by gift or succession. 6 Ind. Cas. 260 (261). **Q**
- (d) It is well settled that the preamble to a statute can neither expand nor control the scope and application of the enacting clause, when the latter is clear and explicit. 6 Ind. Cas. 260 (261). **R**
- (e) But, if the language of the body of the Act is obscure or ambiguous, the preamble may be consulted as an aid in determining the reason of the law and the object of the Legislature, thus arriving at the true construction of the terms employed. 6 Ind. Cas. 260 (261). **S**
- (f) It cannot be disputed that where the words of the enacting clause are more broad and comprehensive than the words of the preamble, the general words in the body of the statute, if free from ambiguity, are not to be restrained or narrowed down by particular or less comprehensive recitals in the preamble. *Copeman v. Gallant*, 1 P. Wins. 314, cited in 6 Ind. Cas. 260 (261). **T**
- (g) As stated in Dwaris on Statutes (Potters Edition 109), the preamble of a statute is no more than a recital of some inconvenience, which by no

General—(Continued).

means excludes any others for which a remedy is given by the enacting part of the statute. *King v. Pierce* (3 M. & S. 62 at p. 66); *Copland v. Davis*, L.R. 5 H.L. 358; 21 W.R. 1; *Fellowes v. Clay*, in 4 Q.B. 313 at p. 349; 6 Ind. Cas. 260 (261). U

N.B.—This principle has been repeatedly applied in the construction of Indian Statutes as well. See 7 M.L.A. 72; 2 M.H.C.R. 322; 11 A. 262; and 22 B. 231 at p. 32; 6 Ind. Cas. 260 (261). Y

- (8) **Conditions which must be satisfied before the Judge can entertain an application under the Act, and the means by which he should ascertain whether these conditions have been satisfied.**

The following observations of their Lordships may be noted as throwing light on the above point:—"It has been argued before us that the Court below ought not to have acted upon the affidavit filed by the petitioner, but should have examined the petitioner himself on oath or solemn affirmation; and in support of this proposition, reliance has been placed upon the cases of *Josada Koonwar v. Baboo Gourree Byinath Pershad* and *Sat Koer v. Gopal Sahu*. No doubt, in these cases, it was ruled that before a Court can assume jurisdiction to proceed under Act XIX of 1841 it must be found that the provisions of the law have been strictly complied with; but we are unable to hold that the Judge in the case before us has proceeded in an irregular manner. In the exercise of his judicial discretion, he was entitled to act upon the affidavit of the applicant and we are not satisfied that the opposite party has any legitimate grievance, because the Judge has only called upon them to produce their evidence. He has taken steps preliminary to action upon the application; and the circumstances in our opinion, amply justify the order which he has made. It is an elementary rule of law that when the jurisdiction of a Court can be exercised under certain specified circumstances, if the exercise of such jurisdiction is invoked on the allegation that all the elements necessary to make the law operative are present, and if this is denied, it is not only competent to the Court but it is its duty to investigate whether all the elements essential to create jurisdiction do, as a matter of fact, exist. Now, in the preliminary stage contemplated by S. 3 of Act XIX of 1841, the Judge has merely to satisfy himself upon the declaration of the complainant and also upon the examination of witnesses and documents if he deems necessary whether there are strong reasons for the belief that the application is *bona fide* and that judicial action ought to be taken. This merely implies that an application made under the Act ought not to be granted as a matter of course, but that the Court should proceed with caution and satisfy itself that there are sufficient grounds in support of a *prima facie* case (See *Phool Chand v. Krishmish Koer*). If the Judge is satisfied that there are such *prima facie* grounds, he cites the party against whom the complaint has been made, so that he may determine summarily the right to possession. 6 Ind. Cas. 260 (262). W

- (9) **Construction of the preamble.**

The preamble to this Act must be read by the light of S. 3 and the following Sections of the Act. 11 C.L.J. 521. X

General—(Concluded).

(10) Cases under this Act and Act XXVI of 1860, if can be tried on common issues.

The objects of Act XIX of 1841 and XXVII of 1860 are so different that two cases under those Acts respectively cannot be decided entirely upon issues common to both. 6 W.R. Mis. 53 (54). **Y**

(11) District Judge delegating his authority under the Act not legal.

The application contemplated by S. 1 of the Act should be made to the District Judge in the Punjab, and he alone has power to make the summary investigation under this Act and to pass final orders. No authority is given to him either in this Act, or in the Punjab Court's Act, to delegate his authority to a judge subordinate to his Court. He acts without jurisdiction, if he directs a subordinate Court to make the whole of the investigation and report the result to him for final orders. 203 P.R. 1889. **Z**

N.B.—See also Notes under S. 3, *infra*.

1.—“Curators.”

N.B.—A curator appointed under this Act is not to exercise any authority lawfully belonging to a holder of a certificate under Act 27 of 1860 or 7 of 1839 or to an executor or administrator. See the Succession Certificate Act, 1898 (7 of 1889), S. 23, (1). **A**

2. * * * * * It shall be lawful for any agent, relative or near friend,

Agent, &c., may
apply in behalf of
minor, &c.

or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property

as aforesaid, to make the like application for relief.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the commencement of S. 2 were repealed by the Repealing Act, 1874 (16 of 1874).

3. * * * * * The Judge to whom such application shall be made

Enquiry made by
Judge.¹

shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and

documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bona fide*.

(Notes).

General.

N.B.—The words “And it is hereby enacted that” at the commencement of S. 3 were repealed by the Repealing Act, 1874 (16 of 1874).

(1) Scope of S. 3.

The scheme of the Act is that the finding of the Judge of the two points mentioned in S. 3 is a condition precedent to the Act being put in force; for, S. 4 enacts that in case the Judge is satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of. 12 M. 341 (344). **B**

General—(Concluded).

(2) Application of the section.

- (a) An application may be maintained when it is alleged by a person who claims a share in the estate left by the deceased, that that share has been seized by other persons in assertion of a pretended claim of right by gift or succession. 6 Ind. Cas. 260. **C**
- (b) In the exercise of his judicial discretion, the Judge is entitled to act upon the affidavit of the applicant, under S. 3 of the Act. 6 Ind. Cas. 260. **D**
- (c) Where a Judge, on hearing an application under Act XIX of 1841 from the nephew of a deceased Hindu, in which no case of force or fraud, nor of a likelihood of misappropriation, nor of an inability to proceed by regular suit, was submitted to the Judge, simply on the solemn declaration of the complainant, and without making the preliminary enquiry required by S. 3 issued his citation to the widow complained of—*Held* that the defect in the Judge's procedure has been cured by the widow appearing and opposing the application on its merits. 6 W.R. Mis. 53 (54). **E**

1.—“Enquiry made by Judge.”

(1) Enquiry, scope of—Interpretation of statute—Defect in procedure—Interference by High Court.

- (a) The preamble of Act XIX of 1841 must be read by the light of S. 3 and the following sections of the Act. 11 C.L.J. 521. **F**
- (b) S. 3 contemplates an enquiry upon two points, *first*, whether the opposite party has lawful title, and *secondly*, whether the applicant is really entitled, and whether he is likely to be materially prejudiced if left to a regular suit. 11 C.L.J. 521. **G**
- (c) Where an order under the Act has been made but the procedure has not been followed, it is competent to the High Court to interfere. 11 C.L.J. 521. **H**

(2) Application by the nearest heir of the deceased male for possession—Property claimed by right “in succession”—Inquiry upon solemn declaration—Affidavit.

- (a) One Kotrappa, representative *Vatandar of Deshadat Vatan*, died in 1892. His widow Basawa was entered on the *Vatan* Register as representative *Vatandar* and she held the *Vatan* property until her death in 1907. Within six months of Basawa's death, Khanappa, who claimed to be the nearest heir of Kotrappa, applied for possession of the property under the Curator's Act (XIX of 1841) and the Judge granted his application. One of the opponents to the application thereupon moved the High Court under the extraordinary jurisdiction contending that,
- (1) under S. 14 of the Curator's Act (XIX of 1841) the provisions of the Act could not be put in force because Kotrappa died more than six months before the date of the application, and
- (2) in granting the application the Judge did not follow the procedure which is made imperative by the words of section 3 of the Curator's Act (XIX of 1841); that is, there was no inquiry upon solemn declaration of the complainant (applicant).

1.—“Enquiry made by Judge” —(Concluded).

Held, that, (1) The decease of the proprietor whose property was claimed by right “in succession” referred to in section 14 of the Act included the decease of Basawa because she was, between the death of her husband and her own decease, the proprietor of the property claimed. All that was to be decided was, who should be put into possession of the property in succession to the last deceased holder. 34 B. 115 = 11 Bom. L. R. 1309 = 4 Ind. Cas. 594. I

(b) The Judge having acted upon the application of the claimant in addition to his affidavit on solemn affirmation, the statements in the affidavit furnished sufficient grounds for action under S. 4 of the Curator’s Act (XIX of 1841) having regard to the provisions of the Oaths Act (V of 1840). (*Ibid*). J

N.B.—See also notes under S. 1, *supra*, and S. 4, *infra*.

4. * * * * * In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to the regular suit as hereinafter mentioned) and shall deliver possession accordingly: Provided always that the Judge shall have the power to appoint an officer to secure effects, seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the commencement of S. 4 were repealed by the Repealing Act, 1874 (16 of 1874).

N.B.—See also notes under Ss. 1 and 3, *supra*.

5. * * * * * In case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: Provided always that, in the case of land, the

14 **Act XIX of 1841** (SUCCESSION PROPERTY PROTECTION). [Ss. 5 to 7]

Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

(Notes).

General.

N.B.—The words “And it is hereby enacted that” at the commencement of S. 5 were repealed by the Repealing Act, 1874 (16 of 1874).

(1) **The conditions subject to which a Curator is to be appointed.**

The conditions subject to which a Curator is to be appointed are (i) that there must be an application and an examination as aforesaid (that is to say as directed in section 3 (ii) that the Judge must be in a position to say upon such application and examination that danger is to be apprehended of misappropriation or waste of the property before the summary suit can be determined, and (iii) that the delay in obtaining security from the party in possession or its insufficiency is likely to expose the party out of possession to considerable risk. 12 M. 341 (345, 346). **K**

(2) **Nature of the powers of the Curator.**

(a) A Curator appointed under Act XIX of 1841 is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage within the meaning of section 4 of the Succession Certificate Act (VII of 1889), and he is not required to take out a certificate under it before he can obtain a decree. 20 B. 437 (438). **L**

(b) He is not a representative of the deceased person, but is merely entrusted by the Court with certain powers over the estate for a temporary purpose, amongst which is the power to sue in his own name given him by section 9 of Act XIX of 1841. 20 B. 437 (438). **M**

N.B.—See also notes under S. 3, *supra*.

6. * * * * * The Judge shall have power to authorize such

Powers conferrable on curator. curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession: Provided always that it shall be

Discretion to allow party in possession to continue. entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the commencement of S. 6 were repealed by the Repealing Act, 1874 (16 of 1874).

7. * * * * * The Judge shall exact from the curator security

Curator to give security and may receive remuneration. for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case

exceeding five *per centum* on the personal property and on the annual

Disposal of surplus. profits of the real property. All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit: Provided always that, although security shall be required from the curator with all

Curator may be invested with powers before security is taken. reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no

delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the commencement of S. 7 were repealed by the Repealing Act, 1874 (16 of 1874).

8. * * * * * Where the estate of the deceased person shall consist

Report from Collector where estate includes revenue-paying land. wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall

demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwani Adalat, and the Court of Sadr Diwani Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the beginning of S. 8 were repealed by the Repealing Act, 1874 (16 of 1874).

9. * * * * * The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and * *

Institution and defence of suits. Authority for collection of dues. all suits may be instituted or defended in the name of the curator on behalf of the estate: Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

(Notes).

General.

N.B. (1)—The words “And it is hereby enacted that” at the beginning of S. 9 were repealed by the Repealing Act, 1874 (16 of 1874).

N.B. (2)—The word “that” in S. 9 after the word “And” and before the words “all suits” was repealed by the Repealing Act, 1876 (12 of 1876).

10. * * * * Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Allowances to apparent owners pending custody by curator.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the beginning of S. 10, were repealed by the Repealing Act, 1874 (16 of 1874).

11. * * * * The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

Accounts to be filed by curator.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the beginning of S. 11, were repealed by the Repealing Act, 1874 (16 of 1874).

12. * * * * The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator; And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Inspection of accounts and right of interested party to keep duplicate.

Penalty for default as to accounts.

(Note).

General.

N. B.—The words “And it is hereby enacted that” at the beginning [of S. 12, were repealed by the Repealing Act, 1874 (16 of 1874).

13. * * * * After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another curator in respect of the residue or any portion thereof: provided always that no Judge shall appoint a curator or

Bar to appointment of second curator for same property.

Curators of different parts of property.

Ss. 13 to 15] Act XIX of 1841 (SUCCESSION PROPERTY PROTECTION). 17

entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided further that, if two or more curators be appointed by different

Power to appoint
sole curator.

Judges for several parts of an estate, it shall be lawful for the Sadar Diwani Adalat to make such order as it shall think fit for the appointment of one curator of of the whole property.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the beginning of S. 13 were repealed by the Repealing Act, 1874 (XVI of 1874).

14. * * * * * This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

Limitation of time
for application for
curator.

(Note).

General.

N.B.—The words “And it is hereby provided that” at the beginning of S. 14 were repealed by the Repealing Act, 1874 (XVI of 1874).

15. * * * * * This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions he shall give effect thereto.

Bar to enforcement of Act against public settlement or legal directions by deceased.

(Note).

General.

N.B.—The words “And it is hereby enacted that” at the beginning of S. 15 were repealed by the Repealing Act, 1874 (XVI of 1874).

S. 15, Scope and application of section.

The proper construction is that, if it is shown that the deceased proprietor had given lawful directions as to the possession of his property after his decease and during the minority of his son, the Judge having jurisdiction is bound to give effect to them and not to put the Act into force so as to contravene them. The section provides a rule of decision for the guidance of the Judge in dealing with the summary suit on the merits than to interdict the exercise of jurisdiction under the Act. 12 M. 341 (346).

N

16. * * * * * This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid; and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

Court of Wards to be made curator in case of minors having property subject to its jurisdiction.

(Note).

General.

N.B.—The words “And it is hereby provided that” at the beginning of S. 16 were repealed by the Repealing Act, 1874 (XVI of 1874).

17. * * * * * Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Saving of right to bring regular suit.

(Note).

General.

N.B.—The words “And it is hereby provided that” at the beginning of S. 17 were repealed by the Repealing Act, 1874 (XVI of 1874).

18. * * * * * The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but * for this purpose it shall be final, not subject to any appeal or order for review.

Effect of decision on summary suit.

(Notes).

General.

N.B.—1. The words “And it is hereby enacted, that” at the beginning of S. 18 were repealed by the Repealing Act, 1874 (XVI of 1874).

N.B.—2. The word “that” after the word “but” and before the words “for this purpose” were repealed by the Repealing Act, 1876 (XII of 1876).

(1) Orders under the Act, if subject to revision.

(a) On a petition presented by the Agent of the Court of Wards a District Court made an order which purported to have been made under Act XIX of 1841, S. 5. The conditions prescribed by Ss. 3 and 4 were not shown to exist:

Held, the order of the District Court was illegal, and was subject to revision under S. 622 of the Code of Civil Procedure (1882). 12 M. 341. O

General—(Concluded).

- (b) Where a District Court purporting to act under S. 4 of Act XIX of 1841 directed an inventory of the estate of a deceased person to be taken without conforming to the requirements of S. 3 of that Act, the High Court set aside the order under S. 622 of the Code of Civil Procedure, 1882, as made without jurisdiction. 10 M. 68. **P**
- (c) The High Court has no power to revise any *legal* proceeding or order of the District Judge under the said Act, however erroneous, improper or unjust such proceeding or order may be. 2 N.L.R. 72. **Q**
- (2) **Defect in procedure—Interference by the High Court.**
Where an order under the Act has been made, but the procedure has not been followed, it is competent to the High Court to interfere. 11 C.L.J. 521. **R**
- (3) **District Judge acting illegally and with material irregularity—Revision.**
Where the District Judge acts illegally and with material irregularity, and the petitioner is prejudiced thereby, the High Court has jurisdiction, in revision, to set aside the order of the District Judge. 34 C. 929=12 C.W.N. 65. (4 C.W.N. cxxvi; 10 M. 68, R.). **S**

19. * * * * * It shall be lawful for the Governments of the respective Presidencies to appoint public curators for any district or number of districts: and the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act.

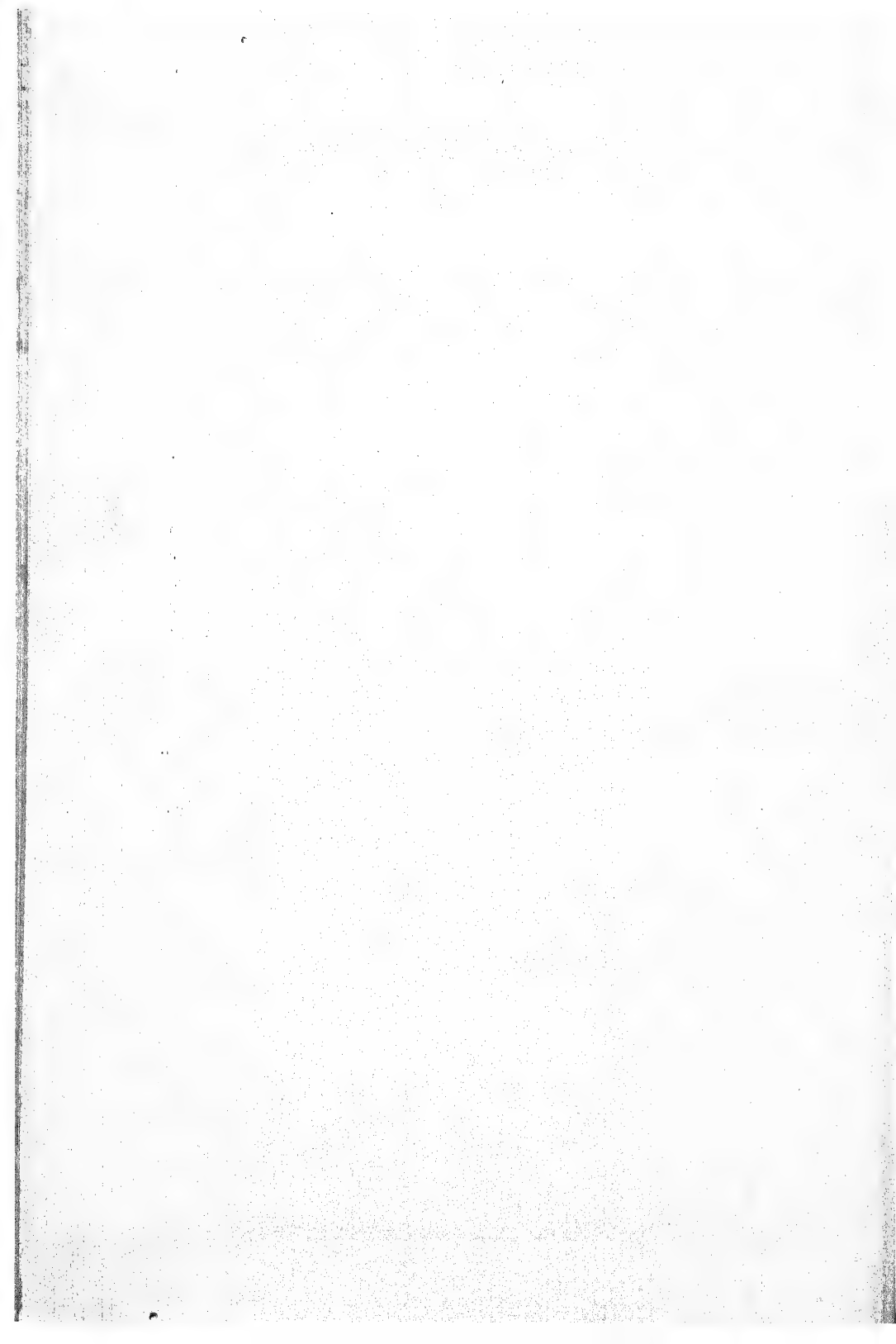
Appointment of public curators.

(Note).

General.

N.B.—The words 'And it is hereby enacted that' at the beginning of S. 19 were repealed by the Repealing Act, 1874 (XVI of 1874). **T**

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SUCCESSION (PROPERTY PROTECTION) ACT, 1841.

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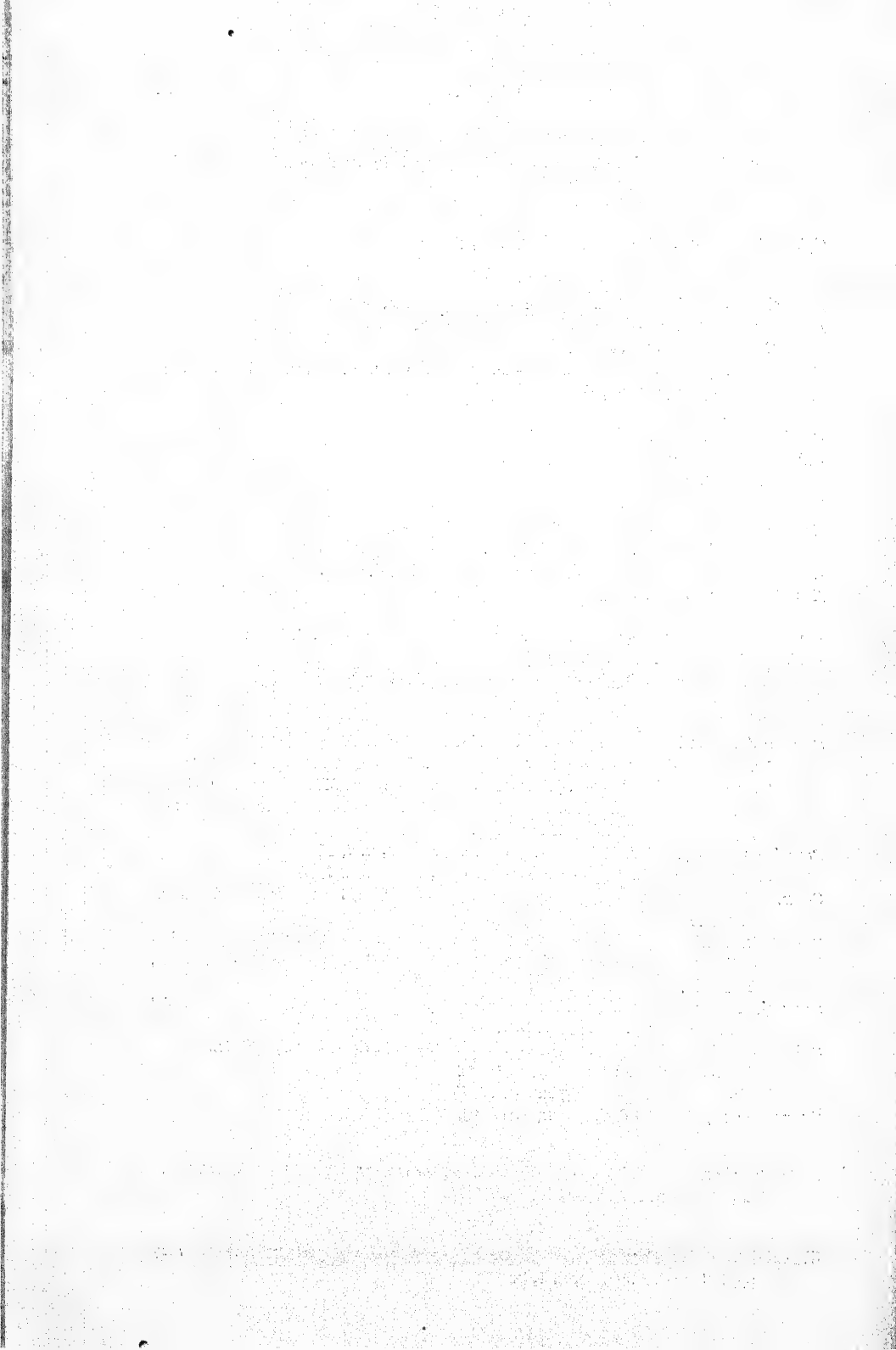
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THE
ILLUSORY APPOINTMENTS AND
INFANTS' PROPERTY ACT, 1841.

(ACT XXIV OF 1841).

(WITH THE CASE-LAW THEREON)

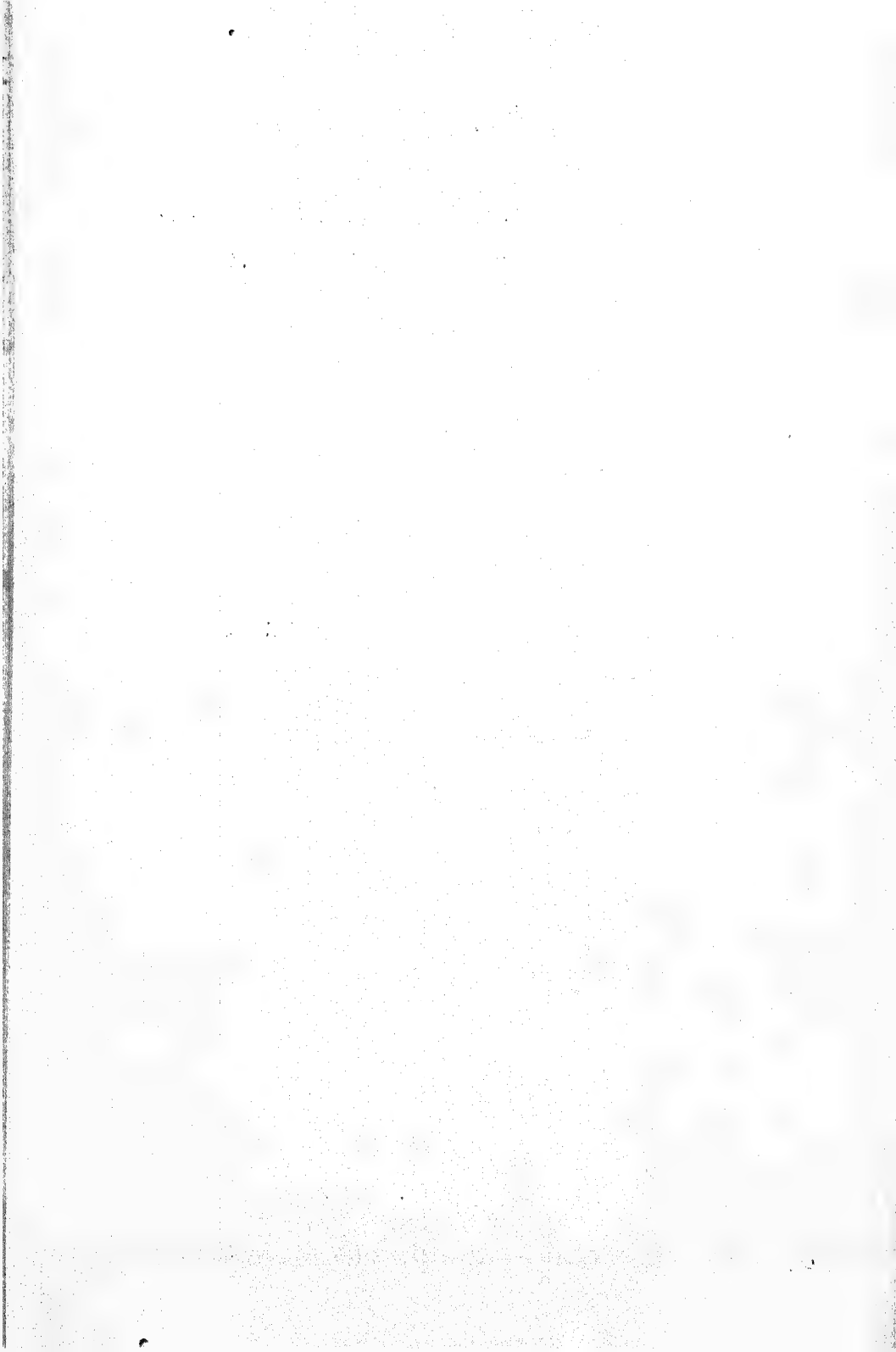
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THE ILLUSORY APPOINTMENTS AND INFANTS' PROPERTY ACT, 1841.

(ACT XXIV OF 1841.)¹

[Passed on the 18th October, 1841.]

AN Act for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England, in regard to the *undisposed residue of the effects of Testators*, Illusory Appointments, the transfer of Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons and other like matters.

(Notes).

1.—“Act XXIV of 1841.”

N.B.—The whole Act, except so far as it relates to illusory appointments and infants, and except S. 5, was repealed by the Repealing Act, 1868 (VIII of 1868).

(1) Act, where declared in force.

The Act has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), Gen. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. 1, p. 44) and Manbhum and Parghana Dalbhum and the Kolhan in the District of Singhbhum. See Gazette of India, 1881, Pt. 1, p. 504.

The Scheduled Districts in Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. 1, p. 666, and Gazette of India, 1898, Pt. 1, p. 870. A

1. [Extension of 11 Geo. IV. and 1 Will. IV, c. 46]. Rep. by the Repealing Act, 1868 (VIII of 1868).

2. * * * * The Statute 11, George IV. & 1 William IV., chapter 46¹, entitled “An Act to alter and amend the Law relating to Illusory Appointments,” and the Statute 11, George IV. & 1 William IV., chapter 65², entitled “An Act for consolidating and amending the Law relating to property belonging to infants, feme-coverts, idiots, lunatics, and persons of unsound mind,” shall * * * * 3 be extended to the territories of the East India Company, as far as it is applicable to the same.

(Notes).

General.

N.B.—The words “And it is hereby enacted, that” at the beginning of S. 2 were repealed by the Repealing Act, 1874 (XVI of 1874). B

1.—“The Statute 11, George IV & 1 William IV, Cap. 46.”

N.B.—See the above statute cited below *in extenso*.

11 Geo. IV and 1 William IV, Cap. XLVI.

An act to alter and amend the Law relating to illusory appointments. (16th July, 1830).

Whereas, by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of such property; and whereas appointments in exercise of such powers whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law.

And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law; Be it therefore enacted, etc.

That no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory or nominal share of the property subjected to such power.

Illusory appointments shall be valid in equity as well as at law.

Not to affect any deed which declares the amount of the share; nor to give any other force to any appointment than the same would have had.

2. Provided always, and be it further enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid which shall declare the amount of the share or shares from which no object of the power shall be excluded.

3. Provided also, and be it further enacted and declared, that nothing in this Act contained shall be construed, deemed or taken, at law or in equity, to give any other validity, force or effect to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

2.—“Statute 11, George IV & 1 William IV, Cap. 65.”

N.B.—See the above Statute cited below *in extenso*.

1. 11 Geo. IV & 1 Wm. IV, Cap. LXV.

An Act for consolidating and amending the law relating to property belonging to infants, feme-coverts, idiots, lunatics, and persons of unsound mind (23rd July, 1830).

12. And be it further enacted, that in all cases where any person, being under the age of 21 years—is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term

2.—“*Statute II, George IV & I William IV, Cap. 65*”—(Continued).

of years, either absolute or determinable upon the death of one or more person or persons, or otherwise it shall be lawful for such person under the age of 21 years, or for his or her guardian or other person on his behalf,—to apply to the Court of Chancery in England, the Courts of Equity of the Counties Palatine of Chester, Lancaster and Durham, or the Courts of Great Session of the Principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said Courts respectively, such infant—or his guardian, or any person appointed in the place of such infant—by the said Courts respectively, shall and may be enabled from time to time, by deed or deeds to surrender such lease or leases, and accept and take, in the place and for the benefit of such person under the age of twenty-one years,—one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such manner of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

14. And be it further enacted, that every sum of money and other consideration paid by any guardian—or other person as a fine, premium, or income, or in the nature of a fine, premium or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant—for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Courts and Lord Chancellor, intrusted as aforesaid, respectively shall direct and determine; and as to leases to be made upon surrenders by *femes-covert*, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises for the benefit of the person who shall advance the same.

15. And be it further enacted, that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

16. And be it further enacted, that where any person, being under the age of twenty-one years—might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant,—by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian,—or of any person entitled to such renewal from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise, as the Court by such order shall direct.

2.—“*Statute 11, George IV & 1 William IV, Cap. 65*”—(Continued).

17. And be it further enacted, that where any person, being an infant under the age of 21 years, is or shall be seized or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the said Court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being had to the nature of the lease shall be reserved upon such lease and the leases and covenants and provisions therein shall be settled and approved of by a Master of the said Court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named and such counterpart shall be deposited for safe custody in the Master's Office until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained; provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

25. And whereas by an Act passed in the first year of the reign of King George the First instituted an Act for making more effectual Her late Majesty's gracious intentions for augmenting the maintenance of the poor Clergy, it was enacted that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements: And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued; Be it further enacted, that so much of the said Act of the first year of the reign of King George the First, as hereinbefore recited, shall be and the same is hereby repealed.

So much of 1. G. I., C. 10, S. 9 as enacts that agreements of guardians shall bind infants, repealed.

N.B.—This section (25) has been repealed in England by the Statute Law Revision Act, 1875 (36 & 37, Vict., C. 91), Schedule. **C**

26. And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last recited Act, if the same had not been repealed.

Such agreements may be made by guardians with the approbation of the Court.

2.—“Statute 11, George IV & 1 William IV, Cap. 65”—(Concluded).

32. And be it further enacted that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said Court to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance.

N.B.—As to the repeal of parts of the Act (*viz.*, 11 Geo. IV & 1 Wm. IV, Cap. LXV), in England, see the Statute Law Revision Act, 1873 (36 & 37 Vict., C. 91). D

3.—“*Shall.*”

N.B.—The words “From the first day of January next” after the word “shall” and before the words “be extended” in section 2 were repealed by the Repealing Act (XVI of 1874). E

3. [Extension of 11 Geo. IV and 1 Wm. IV, C. 60]. Rep. by the Indian Trustee Act (XXVII of 1866).

4. * * * * Section 1 * * * 11 of the 11 George IV and 1 William IV, chapter 47³, entitled “an Act for consolidating and amending the laws for facilitating the payment of debts out of real Estate,” shall 2 * * * be extended to the territories of the East India Company, as far as it is applicable in the same.

Extension of II Geo. IV. and 1 Wm. IV, c. 47, Ss. 10 and 11.

(Notes).

General.

N.B.—The words “And whereas it is expedient to adopt the amendments of the English Law touching the delay of action, suits or other proceedings, by reason of the parol demurring; and touching conveyances made by infants under order of Courts; It is hereby enacted that,” at the commencement of section 4, were repealed by the Repealing Act, (XVI of 1874). F

1.—“*Section.*”

N.B.—The figures and word “10 and” after the word “section” were repealed by the Repealing and Amending Act, 1891 (XII of 1891). G

2.—“*Shall.*”

N.B.—The words “from the first day of January next” after the word “shall” and before the word “be extended” in S. 4 were repealed by the Repealing Act, 1874 (XVI of 1874). H

3.—“11 George IV & 1 William IV, Cap. 47.”

N.B.—See the above Statute cited below *in extenso*.

I

11 Geo. IV & 1 Wm. IV, Cap. XLVII.

An Act for consolidating and amending the Laws for facilitating the payment of debts out of real estate. [16th July, 1830].

XI. *And be it further enacted, that* where any suit hath been or shall be instituted in any Court of Equity, for the payment of any debts of any person or persons deceased, to which their heir or heirs, devisee or devisees, may be subject or liable, and such Court of Equity shall decree the estates to such debts or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such Court shall direct, and, if necessary, compel such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said Court shall think proper and direct; and every such infant shall make such conveyance accordingly; and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons, being an infant or infants, was or were at the time of executing the same of the full age of twenty-one years.

N.B.—The initial words “*And be it further enacted, that*” were repealed in England by the Statute Law Revision Act, 1888 (51 & 52 Vict., C. 57), Schedule. J

5. * * * * This Act shall not be construed to affect any case which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof * *. Saving of certain cases and proceedings.

(Notes).

General.

N.B.—(1) The words “And it is hereby provided, that” at the commencement of section 5 were repealed by the Repealing Act, 1874 (XVI of 1874). K

N.B.—(2) The words “or any proceedings at law or in Equity commenced before the first day of January next,” at the end of section 5, were repealed by the Repealing and Amending Act, 1891 (XII of 1891). L

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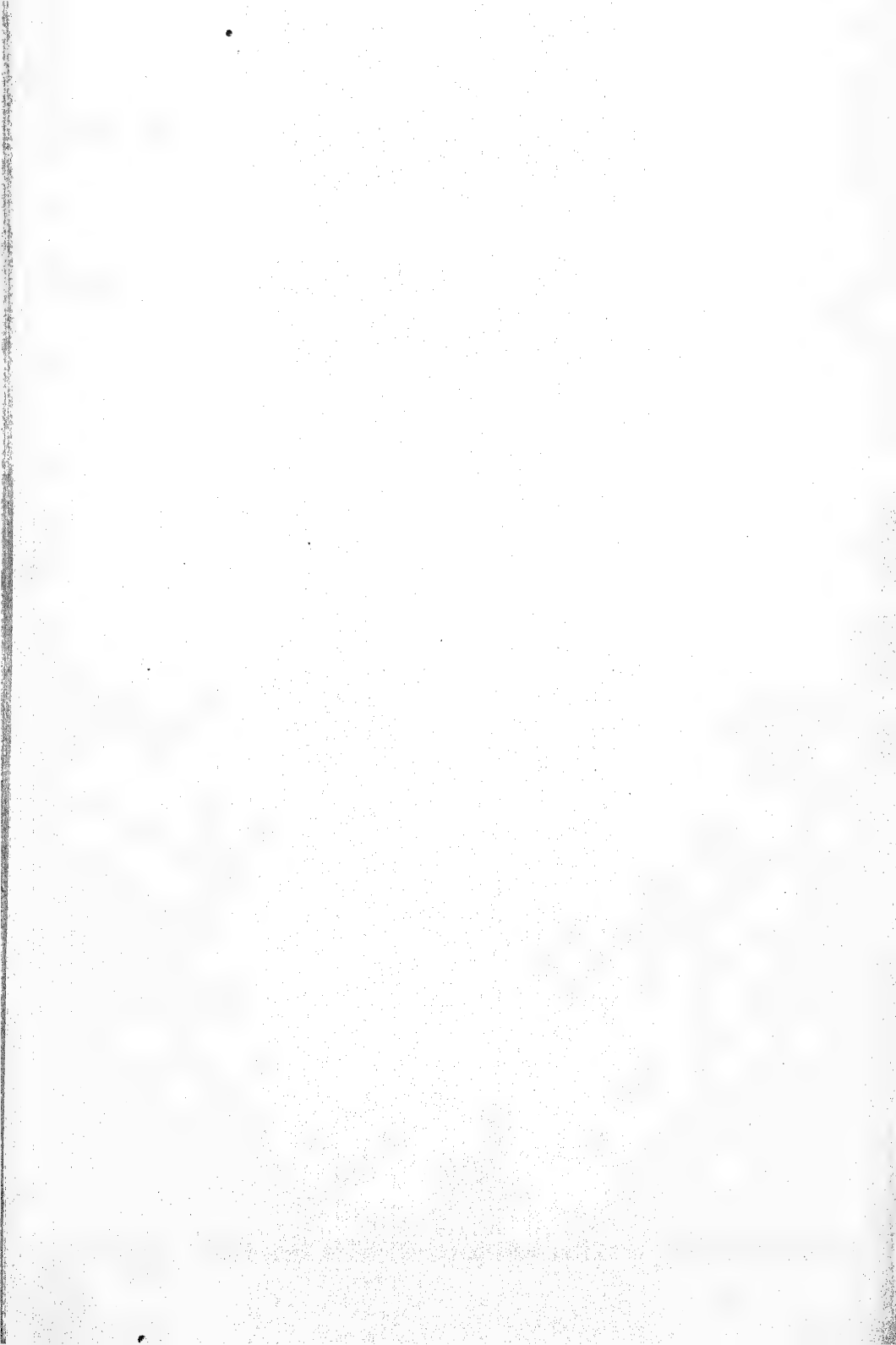
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THE
CASTE DISABILITIES REMOVAL
ACT, 1850.

(ACT XXI OF 1850)

(WITH THE CASE-LAW THEREON)

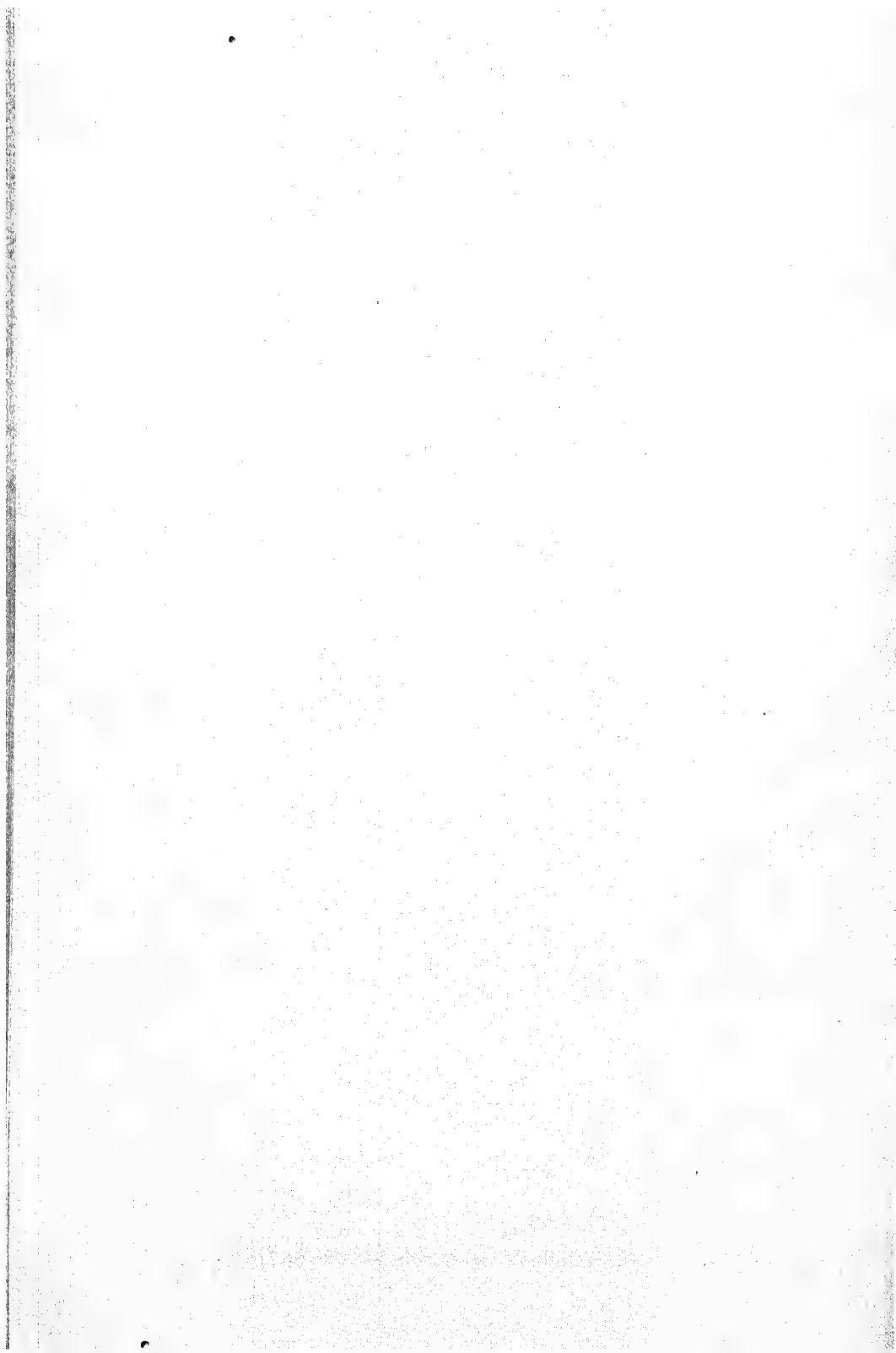
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THE CASTE DISABILITIES REMOVAL ACT, 1850.

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THE CASTE DISABILITIES REMOVAL ACT, 1850.

(ACT XXI OF 1850).

[Passed on the 11th April, 1850.]

An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company.

WHEREAS it is enacted by section 9, Regulation VII, 1832¹ of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company; It is enacted as follows:—

(Notes).

General.

(1) Act, where declared in force.

This Act has been declared in force in the whole of British India except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), S. 3.

It has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), S. 3, as amended by the Santhal Parganas Laws and Justice Regulation, 1899 (III of 1899), Ben. Code, Vol. I; in the Arakan Hill District (with modifications) by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), S. 3, Bur. Code.

It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sindh ... See Gazette of India, 1880, Pt. I, p. 672.

West Jalpaiguri ... Do. 1881 Do. 74.

The Districts of Hazaribagh, Lohardaga
(now the Ranchi District, see Calcutta
Gazette, 1899, Pt. I, p. 44), and Manbhum
and Pargana Dhalbhum and the Kolhan
in District of Singhbhum

... Do. 1881 Do. 504.

General—(Continued).

The Scheduled portion of the Mirzapur District	...	See Gazette of India, 1879, Pt. I, p. 383.	
Jaunsar Bawar	...	Do.	1879 Do. 382.
The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. (Portions of the Districts of Hazara Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat, now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 357 and <i>ibid</i> , 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation (II of 1900, S. 3), Punjab and N. W. Code)			
The District of Lahaul	...	Do.	1886 Do. 48.
The Scheduled Districts of the Central Provinces	...	Do.	1886 Do. 301.
The Scheduled Districts in Ganjam and Vizagapatam	...	Do.	1879 Do. 771.
Coorg	...	Do.	1898 Do. 870.
The District of Sylhet	...	Do.	1879 Do. 747.
The rest of Assam (except the North Lushai Hills)	...	Do.	1879 Do. 631.
The Porahat Estate in the Singbhum District	...	Do.	1897 Do. 299.
	...	Do.	1897 Do. 1059.

It has been extended, by notification under S. 5 of the last mentioned Act, to the following Scheduled Districts, namely :—

Upper Burma generally (except the Shan States)	...	See Gazette of India, 1898, Pt. I, p. 89.	
	...	and <i>ibid</i>	1899 Do. 98.
Kumaon and Garwal	...	Do.	1876 Do. 606.
The Tarai of the Province of Agra	...	Do.	1876 Do. 505-A

(2) Oudh—Application of Act.

This Act was not first introduced into Oudh by Act XV of 1874 but was in force there since 1856 when the spirit of the Bengal Regulations was declared to be the law of Oudh. S. C. 171 (Oudh). **B**

(3) Title of Act.

For the short title "The Caste Disabilities Removal Act, 1850;" see the Indian Short Titles Act (XIV of 1897). **C**

(4) Intention of Act.

Prior to the passing of Act XXI of 1850, there was in force in the Presidency of the Fort William, Bengal, a Regulation known as Regulation VII of 1832. Speaking broadly, S. 9 of that Regulation was passed to relieve Hindus and Muhammadans in that Presidency from any disability with regard to the rights of property under Hindu or Muhammadan law, which might have arisen by reason of a Hindu or Mahomedan having changed his religion, or by reason of a Hindu

General—(Concluded).

being out of caste. The intention of the present Act, as stated in the preamble, is to extend the principle of S. 9 of the Regulation VII of 1832, which was then in operation in the Provinces subject to the Presidency of Fort William, throughout the territories of the East India Company.

That being so, one would expect that, in the operative part of the Act, the principle of S. 9 of the Regulation would not be cut down or curtailed in any way. 11 A. 100=8 A.W.N. 288. **D**

(5) Retrospectivity of Act.

The Act cannot be given retrospective effect so as to abrogate the Hindu law as to the consequences of apostacy, where the apostacy took place before the enactment. 4 A.L.J. 365. **E**

(6) Construction of Act—Conflict to be avoided.

In construing any enactment such construction should be adopted which avoids any conflict. 77 P. W. R. (1907). **F**

(7) Loss of caste—No forfeiture of rights of property.

Since this Act came into force, mere loss of caste does not occasion a forfeiture of rights of property. 1 B. 559 (4 Bom. H.C. 25, F.). **G**

1.—“Regulation VII, 1832, of the Bengal Code.”

N.B.—Bengal Regulation VII of 1832 is repealed by the Bengal Civil Courts Act, 1871 (VI of 1871), which was repealed by the Bengal, N.W.P. and Assam Civil Courts Act, 1887, (XII of 1887).

1. So much of any law or usage now in force within the territories

Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.

subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to

be enforced as law in the Courts of the East India Company, and in the the Courts established by Royal Charter within the said territories.

(Notes).**General.****(1) Loss of Caste—Succession under Oudh Estates Act (I of 1869).**

S. 22 of the Oudh Estates Act contains a complete Code of Succession *ab intestato* and the person designated as next heir by that section does not forfeit his inheritance by having changed his religious faith. S.C. 171. (Oudh). **H**

(2) Estate of deceased widow who lived a life of unchastity—Right of step-son to inherit.

(a) The step-son of a deceased Hindu widow sued as heir for possession of certain property. The defence was that the widow had deserted her husband in his lifetime and lived a life of unchastity and that the plaintiff's right of inheritance was in consequence destroyed. Held,

General—(Continued).

that assuming the widow to have been guilty of unchastity and to have been actually degraded for it, plaintiff's right to inherit her property in the absence of nearer heirs could not be affected by such degradation. 23 M. 171. I

- (b) Though Act XXI of 1850 gives relief against the forfeiture of rights of persons deprived of caste on other grounds besides that of renouncing or being excluded from the Hindu religion, it does not restore to an outcaste all the rights which he, as a casteman, could have civilly enforced. 23 M. 171. J

- (c) Nor does it contemplate the restoration of privileges the granting of which would amount to an interference with the autonomy of caste. 23 M. 171. K

- (d) Nor does it interfere with the forfeiture of such a right, as, *e.g.*, to participate with other members of a caste in the benefits of a religious institution appropriated to the members of the caste, or to participate jointly with fellow casteman in the benefit of a caste institution. 23 M. 171. L

- (e) Nor can it apply where the question is not as to the rights of a degraded person, but as to who is entitled to the property of a degraded person. 23 M. 171. M

- (f) Though, under the Hindu law, a loss of caste by expulsion for specified reasons causes forfeiture of rights, it has never broken the relationship of the person expelled to those who remain within the caste, degradation having merely the effect of rendering the tie of kindred but dormant; and, *e.g.*, the degradation of either spouse does not dissolve the tie of marriage: It is impossible to construct out of the *smritis* and commentaries a consistent doctrine of "civil death" or "fiction of death". 23 M. 171. N

- (3) Act intended to prevent the forfeiture of rights of others than those who are put out of caste on account of their renouncing or being excluded from religion—Case law on the point reviewed.

- (a) The following observations of Subramaniya Iyer and Boddam, JJ., throw light on the above point:—"There is no reason to suppose that in the face of the clear and unmistakable language of the Act, it was intended to prevent the forfeiture of rights of only those who are put out of caste on account of their renouncing, or being excluded from, the Hindu religion. Though, in favour of this view there is the solitary opinion of Mitter, J., in *Kery Kolitany v. Moneeram Kolita*, 13 B.L.R. 1, yet the preponderance of authority is in favour of the conclusion that the Act relieves the forfeiture of rights of those who are deprived of caste on other grounds as well. In *Srimati Matangini Debi v. Srimathi Jaya Kali Debi*, 5 B.L.R. 466 at p. 493. Sir Barnes Peacock, C.J., with whom Macpherson, J., concurred, went very fully into the question of the construction of the Act and following the decision of Sir Lawrence Peel in *Doed Saumanoney Dossee v. Nemy Churn Doss*, 2 T & B 300, but dissenting from *Rajkoonwaree Dassee v. Golabee Dassee*, (1858) S.D.A., 1891 at p. 1895, arrived at the conclusion that the Act "was an enactment, that, in suits between Hindus, loss of property by deprivation of caste should not be enforced." In the North West Provinces the

General—(Continued).

above case was followed in *Bhujjaun Lal v. Gya Pershad*, 2 N.W.P. H.C. 446, and in another case also, *Taij Singh v. Musst. Kousilla*, 1 Agra H.C.R. 90, the same construction was put. In the Bombay case, *Parvati v. Blihu*, 4 Bom. H.C.R. (A.C.), 25, Westropp, J., in consultation with the other Judges of the Court, decided that by Act XXI of 1850 deprivation of caste was no longer capable of working a forfeiture of any right or property or affecting any right of inheritance whatever may be the cause. The same view was reiterated in *Honamma v. Timannabhat*, 1 Bom. 559. Turning to the Madras Presidency, a view to the meaning of the Act similar to that taken elsewhere has been more or less explicitly adopted. As pointed out by Sir Barnes Peacock in the case already cited, the observation of Sir C. Scotland in *Pandaiya Telaver v. Puli Telaver*, 1 M.H.C.R. 478 at p. 482 implies that he was inclined to construe Act XXI of 1850 as Sir Barnes Peacock did. In *Karuthedatta v. Mele Pullakkat Vasudevan Nambudri*, 1 Ind. Jur. N.S. 236, Holloway and Collett, JJ., held that a Nambudri who had been put out of caste for adultery did not, in consequence of Act XXI of 1850, lose his right to deal with, hold or inherit property. 23 M. at pp. 174, 175.

- (b) "Nor is there good foundation for the suggestion that the Legislature could not have intended by Act XXI of 1850 to provide for other than degradation on the ground of change of religion. The acts which, under the Hindu Law, would have rendered a person 'pathitha', 'fallen' or 'degraded', were by no means few. And even such among these as would exclude the 'pathitha', from inheritance consisted, not of heinous offences and sins only, but also of such as would hardly be considered in the present state of society as deserving forfeiture of rights. To take an illustration, among the 'mahapathakas' on account of which an out-caste may be excluded is 'surapana' or drinking liquor. Can it be held that because a person drinks liquor, his property is forfeited to him? Indeed, such a system must be, as a writer observes, "altogether impracticable in any conceivable state of society." No wonder, therefore, that even before the advent of the British rule, Hindu society was silently freeing itself from the trammels of the peculiar branch of the law as will be seen from Sri Krishna Tarakalankara's observations on the term 'fallen' quoted in page 426 of the Tagore Lectures of 1884—85. These observations clearly suggest, as pointed out by the learned author of the lectures, that the loss of proprietary rights had become almost obsolete even in the days of that commentator on the Dayabhaga. (*Ibid.*)

O

(4) Act how far has affected rules of Hindu Law.

Having made the observations cited above, their Lordships Subramaniya Iyer and Boddam, JJ., went on to state:—"Having thus determined to what persons the Act is applicable, we have to consider how and to what extent the Act has affected the Hindu Law applicable to those persons. Under the Hindu Law a person who lost caste by being expelled therefrom for specified reasons forfeited whatever rights he might have had if he had remained in caste. That loss of caste created in him a disability to enjoy the rights incident to his relationship with

General—(Continued).

those who remain within the caste. But it never broke that relationship. Whether the relationship be one of husband and wife or any other, it was too sacred to be dissolved, be the disabilities imposed on the, out-caste few or many as may be inferred from *Bisheshur v. Mata Cholam*, 2 N.W.P.H.C.R. 300, *Queen Empress v. Marimuttu*, 4 M. 243 and *Administrator-General of Madras v. Anandachari*, 9 M. 466, which show that the degradation of either spouse does not dissolve the marriage, and the circumstance that, in general, it is open to an outcaste, on his undergoing expiation, to resume his former position, strongly points to the view that degradation had the effect of rendering the tie of kindred but dormant. It is almost impossible to construct out of the smritis and commentaries a consistent doctrine of 'civil death' or as it has been called 'fiction of death.' Now turning to the language of the Act itself, it clearly indicates that all that the Legislature intended to do was only to remove some of the disabilities which pre-existed under Hindu Law. Here, we must not be understood as laying down that the Act places the outcaste in every respect in the position which he could occupy if he had not been put out of caste or restores to him all the rights which he as a casteman could have civilly enforced. It does not contemplate the restoration of privileges the granting of which would amount to an interference with the autonomy of caste. Nor does it interfere with the forfeiture of rights such as were in question, in *Venkatachallapathi v. Subbrayadu*, 13 M. 293, at p. 299 and in *Krishnasami v. Virasami*, 10 M. 133. As was pointed out by Muttusami Iyer, J., in the former case "a right consisting in the participation along with other members of a caste in the benefits of a religious institution appropriated to the members of the caste is not within their (Acts XXI of 1850 and XV of 1856) purview." P

Such being the construction of the Act it is obvious that the Act is inapplicable to cases where instead of a degraded person's right being in question, the Courts have to ascertain who is entitled to the property of a degraded person. (*Ibid.*) Q

(5) **Scope of Act—Rule to regulate succession of Hindu after conversion to Christianity.**

- (a) As explained in the preamble, the plain object of the Act is not to confer on any party the benefit of the provisions of Hindu or Muhammadan Laws, but is to prevent the provisions of such laws from depriving any party or parties of any property which, but for the operation of such laws, they would be entitled to receive. 36 P.R. 1909. R
- (b) In other words, the Act repeals and abrogates so much of the provisions of the laws as by reason of change of religion deprives any party from continuing to hold property held before conversion or from succeeding to property as an heir after conversion. This is what is expressly enacted in S. 1 of the Act, and the section leaves entirely untouched the question, as to what rule of law is applicable to regulate succession after conversion. (*Ibid.*) S
- (c) This rule of law may be Hindu law, if adhered to despite conversion; but if so, it would be *minus* the rule which causes the forfeiture or excludes from inheritance by reason of change of religion. Or the rule of law might be as contained in some positive enactment of the Legislature. But these are matters altogether beside the scope of this Act. (*Ibid.*) T

General—(Continued).**(6) Application of the Act to heirs of convert.**

The Act applies not only to the convert himself, but also to the heirs of the convert. 23 P.L.R. 1903. **U**

(7) Applicability of section to descendants of converts.

Although the wording of S. 1 of the Act seems to contemplate the relief of the convert himself, rather than of his descendants, yet these latter may be considered within its scope as persons excluded from the communion of any religion; and this construction avoids any conflict with the preamble which states that the principle of Regulation VII of 1832 is intended to be extended to the other provinces. 77 P.W.R. 1907. **V**

(8) Suit by person born a Mahomedan claiming right as reversioner in Hindu family.

Where a person born a Mahomedan, his father having renounced the Hindu religion, claimed by right of inheritance under the Hindu law a share in his father's family, *held* that the Act applied to him also, although he had not directly renounced his religion; and that he was, therefore, entitled to the inheritance. 11 A. 100. **W**

(9) Construction of the section.

(a) The operative portion of the section relates to different classes of persons. In the earlier portion, it protects any person from forfeiture of right of property by reason of his or her renouncing their religion or being excluded from caste. This refers to the rights of the *actual* persons renouncing their religion. The latter portion of the section protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste. This refers to the rights of persons who have not although directly renounced their religion, still are not members thereof owing to their father or some other having previously renounced his religion. Thus the Act protects both classes of persons. 11 A. 100 = 8 A.W.N. 288. **X**

(b) This construction, besides being the natural reading of the section, also gives effect to the intention of the legislature in passing the Act, which is found expressed in the preamble, and to the principle of S. 9 of Regulation VII of 1832. (*Ibid.*) **Y**

(c) It is wrong to construe the section as applying only to a person who has *himself or herself* renounced his religion or been excluded from caste; for, if such a construction is adopted, the Act, instead of extending the principle of S. 9 of Regulation VII to the other Provinces, would have limited the relief it was intended to extend. (*Ibid.*) **Z**

(10) Section applicable to all excommunications from caste—Cause of excommunication immaterial.

(a) Since the passing of the Act, exclusion from caste, whether by renunciation of religion or from any other cause, is no longer a ground for exclusion from inheritance. 2 N.W.P. 446. **A**

(b) A Hindu who had been excommunicated from caste by reason of his having cohabited with a Mahomedan girl was held not to forfeit any rights of inheritance possessed by him before such excommunication. (*Ibid.*) **B**

General—(Continued).

(11) Degradation of caste—No ground for exclusion from inheritance.

The mere fact that the plaintiffs (whose near relationship to maintain the suit was established), are out of caste, and that the men of pure blood of their tribe do not eat with them is, of itself, no ground of exclusion from inheritance, Act XXI of 1850, having annulled any such disqualification. 1 Agra 90. C

(12) Hindu widow—Excommunication for unchastity causes no forfeiture of her rights.

In the case of a Hindu widow mere excommunication from caste although it be for incontinency, cannot effect a forfeiture of any of the rights which she had possessed before such excommunication. 1 B. 559 (4 B.H.C. 25, R.). D

(13) Applicability of Act—Disqualification to inheritance resulting from unchastity—Effect.

(a) Act XXI of 1850 applies only to cases where a person is disqualified from inheriting *by reason of change of religion*, and not to a case where the disqualification arises from a different cause. 32 C. 871=9 C.W.N. 1003=2 C.L.J. 97. E

(b) It was, therefore, held that a married daughter of a Hindu who, during the life-time of her husband, contracted a marriage with a Mussalman and had sons by him, was not entitled to inherit any share in her father's property, as her disqualification did not arise from her renouncing her religion, but from what the Hindu law considered as unchastity, a position in which she cannot, according to the Hindu law, inherit a share in her father's property. (*Ibid.*) F

(14) Exclusion from caste for intrigue—Effect on civil rights.

Exclusion from caste of a Hindu for an alleged intrigue does not involve deprivation of his civil rights to hold, deal with, and inherit his property. 1 Ind. Jur. N.S. 236. G

(15) Loss of caste—Hindu convert to Mahomedanism—Succession.

The Mahomedan son of a Hindu father has the same rights of property as if he had remained a Hindu with reference to Act XXI of 1850. Old S. C. 51 (Oudh). H

(16) Effect of conversion under Hindu Law prior to Act.

"Whatever property a Hindu who has become a convert to the Mahomedan faith, was possessed and seized of previously to his conversion will devolve on his nearest of kin professing the Hindu religion, and whatever he acquired subsequently to his conversion will go to the person, who, according to the Mahomedan Law, becomes his legal heir." Case No. 4, p. 131, Vol. II. Macnaghten's Hindu Law; and cited with approval in 2 Agra 311. I

(17) Loss of caste—Right to give son in adoption.

(a) A Hindu father, not a Brahmin, does not lose his capacity to give his son in adoption by reason of his conversion to Mahomedanism. 25 B 55 = Bom.L.R. 89. J

General—(Continued).

- (b) But in the case of a Brahmin father, the performance of *Datta homa* being necessary for the validity of the adoption, it is doubtful whether loss of caste does not deprive the right to give in adoption. (*Ibid.*) K
- (c) Thus, where a Rajput, whose natural mother was dead and whose natural father had become a convert to Mahomedanism, was given in adoption by his uncle to whom the natural father had given the necessary authority, held that the adoption was valid. (*Ibid.*) L

(18) Right of guardianship, if within purview of Act.

Rights of guardianship over infants, are rights within the purview of this Act. Held, therefore, the fact that a Mahomedan father had embraced Christianity, did not deprive him of his rights of guardianship of his minor children. 167 P.L.R. 1901. M

(19) Hindu Law—Loss of caste—Effect on right of guardianship.

- (a) A Hindu who is outcasted by his community for attempting to marry his daughter, eleven years old, for a money consideration, to an impotent old man of seventy, does not thereby, according to the Hindu law, lose his right to her custody as guardian. 1 A. 549. N
- (b) Even assuming that he would lose the right under the Hindu Law, such rule cannot be enforced in the face of this enactment. (*Ibid.*) O

(20) Loss of caste—Right of guardianship—Not lost.

The fact that a Hindu woman has been outcasted would not deprive her of any right of guardianship of her infant daughter, which she would have otherwise. 28 A. 233 = A.W.N. (1905), 205 = 2 A.L.J. 663 (1 A. 549, R.) P

(21) Loss of caste—Right of custody of children.

A Hindu father's inherent right to the custody of his children, not only as guardian by nature, but by nature, is a right which is preserved to him by Act XXI of 1850, even though he has renounced the Hindu religion. 5 W.R. 235; 1 Morris Sel. Rep. (1850-51), p. 61. Q

(22) Act, not to affect usage of Hindu temple or other religious institutions.

- (a) The provisions of this Act were not intended to repeal the usage of Hindu temples or of religious or of *quasi*-religious institutions controlling and regulating their management and prescribing rules as to the place where offerings are to be made and persons from whom they are to be accepted. 13 M. at p. 298. R
- (b) Her Majesty's Privy Council observed with reference to the right of succession to management that the law to be applied to *mutts* which are *quasi*-religious institutions is what is indicated by their usage. A rule of determination is looked for in the case of such institutions in their usage, because it is an index to the intention of those who founded and endowed them and who have since kept them up. A compliance with such intention is the accepted basis on which those who claim the benefit of worshipping in those institutions can sustain their right to such benefit and unless a person retains his status as a Brahmin or a member of that section of the community for whose benefit Hindu temples exist, he cannot be regarded as coming within the object with which they are founded and maintained. 13 I.A. 105; 11 M.I.A. 405, cited in 13 M. at pp. 298, 299. S

General—(Concluded).

(23) Widow re-marriage—Exclusion from temple—Excommunication—Jurisdiction.

Thus, in this case, the plaintiff, who was a *Smarta* Brahmin, but had married a widow (whose first marriage had not been consummated), alleged that he had made a vow to present an offering in a certain temple, and that the defendants, who were the committee of the temple, had obstructed and prevented him from entering the inner shrine (where orthodox Brahmins usually make their offerings), asserting that he was disqualified to enter by reason of his having married a widow contrary to Hindu *sastras*, and he sued for damages for the above obstruction and imputation, for a declaration that he was entitled to enter the shrine as a Brahmin, and for an injunction restraining the defendants from interfering with his exercise of this right: *Held*, (1) that the right claimed was of a civil nature and within the cognisance of the Civil Courts; (2) that the question to be determined was not a question of the plaintiff's legal *status* since a Brahmin widow is at liberty to re-marry under Act XV of 1856, but it was a question of caste *status* in respect of a caste institution; (3) that in order to determine the above question, the Courts must inquire (a) what was the usage of the temple as regards admission into the inner shrine for the purposes of worship at the date of the suit, or the presumable intention of the religious foundation as regards such admission, and (b) whether according to such presumable intention of the foundation those who secede from the caste custom as to re-marriage of women are outside the class of beneficiaries as regards the right of admission into the inner shrine as above. 13 M. 293. T

CASTE DISABILITIES REMOVAL ACT, 1850.

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THE
PROBATE AND ADMINISTRATION
ACT

(ACT XIII OF 1875.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
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THE
PROBATE AND ADMINISTRATION ACT, 1875.
(ACT XIII OF 1875¹)

[PASSED ON THE 15TH MARCH 1875.]

An Act to amend the Law relating to Probates and Letters of Administration.

WHEREAS, under the Indian Succession Act, 1865, the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the province in which such grant is made; And whereas it is expedient to extend over British India the effect of such grants when made by a High Court; and whereas it is also expedient to amend the Court Fees Act, 1870, as to probates, letters of administration, and certificates of Administration; It is hereby enacted as follows:—

1.—“Act XIII of 1875.”

(1) Statement of objects and Reasons.

For the Statement of Objects and Reasons, *See* Gazette of India, 1874, Pt. V, p. 246. A

(2) Report of the Select Committee and proceedings in Council.

For the Further Report of the Select Committee, *See* Gazette of India, 1875, Pt. V, p. 43; for Proceedings in Council, *See Ibid.*, 1874 Supplement, pp. 1371 and 1381, and *Ibid.*, 1875, supplement p. 435. B

(3) Act, where declared in force.

This Act has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhakbhum and the Kolhan in the District of Singhbhum. (The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894, Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, pp. 44.

... *See* Gazette of India, 1881, Pt. I, p. 504.

The North Western Provinces Tarai ... *See* Gazette of India, 1876, Pt. I, p. 505.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1) and Sch. I, Bur. Code.

The Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899).

I.—“Act XIII 1875”—(Concluded).

(4) Scope of the Act.

(a) Act XIII of 1875 does not empower the High Court to grant Probate limited to property in any Province or Presidency, in cases where an unlimited grant had been made extending only to property in another Province or Presidency before the passing of the Act. 1 C. 52=24 W. R. 206. D

(b) Rule 4 of the Rules of 22nd June 1875 (1), as to grants of Probate, only applies to grants of the class mentioned in Rule 1, *i. e.*, only to cases in which the application for probate is made after 1st April 1875, and not to cases in which the application was made before that date. Per Macpherson, J. in 1 C. 52=24 W. R. 206. E

(5) Letters of Administration to Administrator-General—Form and Extent of Grant.

(a) Grants of letters of administration to the Administrator-General are made to him by virtue of Act II of 1874 (the Administrator-General's Act), and are not in any way affected by the provisions of Act XIII of 1875 (the Act to amend the Succession Act), 4 C. 770. F

(b) The form of grant should be general and unlimited. (*Ibid.*) G

(6) Conveyance to four members of a joint family governed by the Mitakshara Law as tenants in common—Survivorship.

The deceased, who was a member of a Joint Hindu family governed by the Mitakshara law, left a will, of which he appointed his brothers the executors and trustees. The brothers, as executors, applied for probate, but claimed exemption from the payment of probate duty on the ground that the property was “joint ancestral property which would pass by survivorship.” The petition stated that in the lifetime of the testator he and his brothers, out of the income of the ancestral estate, purchased from the corporation of Calcutta some plots of land which were conveyed to them as *tenants in common*; that the effect of this was to vest an undivided one-fourth share in the testator which on his death, would pass not to the remaining coparceners under the rule of survivorship, but to his legal representatives; and that in order that effect might be given to the rule of survivorship it was necessary to obtain probate. Held, that the property, though conveyed to the brothers as *tenants in common*, vested in them as trustees for the benefit of all the coparceners and consequently was not liable to duty. 28 C. 980. H

Addition to Act, 1. Repealed by the Repealing and Amending Act, 1891 X of 1865, section 3. (Act XII of 1891).

[Sections 2, 3, 4 and 5 were repealed by the Probate and Administration Act, 1903, (VIII of 1903), S. 4].

Addition to Act 6. After section 19 of the Court Fees Act, 1870, VII of 1870. the following chapter shall be inserted (namely) :—

(Notes).

N.B.—So much of this section as directs the insertion of S. 19-H in the Court-fees Act, 1870 (VII of 1870), has been repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Chapter III A. [See Act VII of 1870].

THE DISTRICT DELEGATES ACT

(ACT VI OF 1881).

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY
T. A. VENKASAWMY ROW,
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THE DISTRICT DELEGATES ACT. 1881¹.

(ACT VI OF 1881).

[Passed 21st January, 1881.]

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS, it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Preamble.

Short title. 1. This Act may be called The District Delegates Act, 1881¹ :

Extent. It extends to the whole of British India ;

Commencement. and it shall come into force on the first day of April 1881.

(Notes).

1—" District Delegates Act, 1881."

(1) Statement of Objects and Reasons.

For statement of objects and reasons, *See* Gazette of India, 1879, Pt. V, p. 766. **A**

(2) Discussions in Council.

For discussions in Council, *See* (*ibid.*), Supplement, 1879, pp. 595 and 743 ; (*ibid.*), 1880, pp. 515 and 556 ; and (*ibid.*), 1881, pp. 1047 and 67. **B**

(3) Act, where declared in force.

The Act has been declared, under S. 3 (a) of the scheduled Districts Act, 1874 (XIV of 1874) General Acts, Vol. II to be in force in the following Scheduled districts in the Chutia Nagpur Division, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *See* Gazette of India, 1881, Pt. I, p. 504. The Lohardaga District included at this time the Palamau District, which was separated in 1894 ; Lohardaga is now called the Ranchi District, *See* Calcutta Gazette, 1899, Pt. I, p. 44. **G**

Addition of section after section 235 of Succession Act.

2. After sec. 235 of the Indian Succession Act, 1865, the following section shall be added:—

"235-A. The High Court may, from time to time, appoint such Judicial Officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates.'"

Addition of section
after section 241 of
same Act.

3. After sec. 241 of the said Act the following section shall be added :—

Probate and letters
of administration
may be granted by
Delegate.

"241-A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned, that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Addition to sec-
tions 244 and 246 of
same Act.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :—"and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of
section for section
251 of same Act.

5. For sec. 251 of the said Act the following section shall be substituted :—

Caveats against
grant of probate or
administration.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or District Delegate ; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Amendment of
section 253 of same
Act.

6. In sec. 253 of the said Act, after the word "Judge" the words "or officer" and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Addition of sec-
tions after section
253 of same Act.

7. After sec. 253 of the said Act the following sections shall be added :—

District Delegate
when not to grant
probate or adminis-
tration.

"253-A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court,

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

"253-B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Power to transmit statement to District Judge in doubtful cases where no contention.

"253-C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of _____," the words "[or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)]"; and in section 308, after the words "District Judge, by whom" the words "or by whose District Delegate," shall be inserted.

Amendment of sections 254, 255, and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words, "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

THE
ADMINISTRATOR GENERAL'S ACT

(ACT IX OF 1881.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY
T. A. VENKASAWMY ROW,
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THE ADMINISTRATOR GENERAL'S ACT, 1881. (ACT IX OF 1881¹.)

[PASSED ON THE 25TH FEB. 1881.]

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindus, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator-General's Act, 1874, but are subject to the operations of certain other provisions of the said Act, and it is expedient that Parsis should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindus, Muhammadans and Buddhists, and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Administrator General's Act, 1881:"

Commencement. and shall come into force at once.

(Notes).

1.—"Act IX of 1881."

(1) Statement of Objects and Reasons.

For Statement of Objects and Reasons, *See Gazette of India*, 1880, Pt. V, p. 201. A

(2) Proceedings in Council.

For proceedings in Council, *See Gazette of India*, Supplement, pp. 1151, 1207, and *ibid.*, 1881, p. 246. B

(3) Act, where declared in force.

This Act has been declared, under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), *Generals Acts Vol. II*, to be in force in the following Scheduled Districts in the Chutia Nagpore Division namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Sinbhum, *See Gazette of India*, 1881, Pt. I, p. 504. The Lohardaga District included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, *See Calcutta Gazette*, 1899, Pt. I, p. 44.

As to extension of the Act as a part of the Principal Act (II of 1874), *See footnote to that Act in General Acts*, Vol. II. C

Amendment of
Ss. 16, 17, 18 and 64
of No. II of 1874.

2. In Ss. 16 and 17, 18 and 64 respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhists," wherever they occur, the word "Parsi" shall be inserted.

4 Act IX of 1881 (THE ADMINISTRATOR GENERAL'S ACT). [Ss. 3 to 5]

New section inserted after Section 23 of same.

3. After Section twenty-three of the same Act, the following section shall be inserted :—

“ 23-A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator-General : Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Effect of probate or letters granted to Administrator General.

“ Whenever a grant of probate or letters of administration is made by a High Court to be Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.”

New section substituted for Section 28 of same.

4. For Section twenty-eight of the same Act, the following section shall be substituted :—

“ 28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution ; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

Distribution of assets.

“ Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.”

5. [Amendment of sections 36 and 37 of same.] Repealed by the Probate and Administration Act, 1890, S. 11 (2), and the repealing and Amending Act, 1891 (XII of 1891).

Amendment of
Section 38 of same.

substituted.

6. In Section thirty-eight of the same Act, for the words "such certificate" the words "certificate under Section thirty-six or thirty-seven" shall be

(Notes).

N.B.—At the end of this section, the words "and the words 'which oath or affirmation the Administrator General is hereby authorised to administer or take, shall be repealed'" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

New section inserted
after Section 55
of same.

7. After Section fifty-five of the same Act following section shall be inserted:—

"55-A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of Administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted
before Section 61
of same.

8. Before Section sixty-one of the same Act, the following section shall be inserted:—

"60-A. The Administrator-General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Power to examine
on oath.

Saving of letters
and certificates al-
ready granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

THE
PROBATE AND ADMINISTRATION
ACT

(ACT VI OF 1889.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
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AND PUBLISHED BY
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THE PROBATE AND ADMINISTRATION ACT, 1889. (ACT VI OF 1889¹).

[Passed on the 8th March, 1889.]

An Act to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, the Court-fees Act, 1870, and to make provision with respect to certain other matters.

(As modified up to 1st January, 1909.)

WHEREAS it is expedient to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, the Court-fees Act, 1870, ² and to make provision with respect to certain other matters; it is hereby enacted as follows:—

Title, extent, and commencement. 1. (1) This Act may be called the Probate and Administration Act, 1889.

(2) It applies to the whole of British India ³ and

(3) It shall come into force at once.

(Notes).

1.—“ Act VI of 1889.”

(1) Statement of Objects and Reasons.

For statements of objects and reasons, *see* Gazette of India, 1888, Pt. V, p. 53. **A**

(2) Report of Select Committee.

For report of the Select Committee, *see* Gazette of India, 1889, Pt. IV p. 39. **B**

(3) Proceedings in council.

For proceedings in Council, *see* Gazette of India, 1888, Pt. VI, pp. 90 and 136, and *ibid*, 1889, pp. 20 and 45. **C**

(4) Act, where declared in force.

(a) The whole Act, with the exception of s. 21, has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898) Bur. Code. **D**

(b) The Act has also been declared to be in force in the Sonthal Parganas under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. 1. **E**

(c) As being part of the Act amended by it, the Act is in force in British Baluchistan, *see* British Baluchistan Laws Regulation, 1890 (I of 1890), Bal. Code. **F**

2.—“ Court Fees Act, 1870.”

N.B.—After the words “ Court Fees Act, 1870,” the words “and the Stamp Act, 1879” were repealed by the Indian Stamp Act, 1899 (II of 1899).

3.—“British India.”

N.B.—After the words “British India,” the words “inclusive of Upper Burma, except the Shan States,” were repealed by the fifth Schedule to the Burma Laws Act, 1898 (13 of 1898).

2. After the 4th clause of the *explanation* to section 234 of the Indian Amendment of Succession Act, 1865, the following shall be added, S. 234, Act X of 1865. namely :—

“5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.”

3. In section 244 of the same Act, for the words “and that the petitioner is the executor therein named” the following Amendment of S. 244, Act X of 1865. shall be substituted, namely :—

“the amount of assets which are likely to come to the petitioner’s hands, and

“that the petitioner is the executor named in the will”.

Amendment of S. 254 Act X of 1865. 4. For the last forty-two words of section 254 of the same Act the following shall be substituted, namely :—

“he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.”

Amendment of S. 255, Act X of 1865. 5. For the last forty-five words of section 255 of the same Act the following shall be substituted namely :—

“he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.”

6. In section 256 of the same Act, for the words “Every person to whom any grant of administration shall be committed” the words “Every person to whom any grant of letters of administration is committed” shall be substituted, Amendment of section 256, Act X of 1865.

Substitution of
new section for sec-
tion 277, Act X,
1865.

7. For section 277 of the same Act the following shall be substituted, namely :—

“277. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

“ (2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

“ (3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

“ (4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.”

8. *In section 277-A¹ of the same Act, for the words “it is sought to obtain a grant” the words “a grant has been made,” and for the words and figures “the person applying for administration after the first day of April, 1875,” the word “administrator,” shall be substituted.*

Amendment of
section 277-A, Act
X, 1865.

(Notes).

1.—“ Section 277-A.”

N.B.—This section has now been superseded by a new section, bearing the same number, which was inserted by the Probate and Administration Act, 1903, s. 8 of this Act is now therefore obsolete.

Amendment of
section 283, Act X.
1865.

9. (1) In section 283 of the same Act, for the words “the country in which he was domiciled” the words “British India” shall be substituted.

(2) [*Repeal of illustration to section 283.*] *Rep. by the Repealing and Amending Act, 1891 (12 of 1891).*

Addition to Act
X, 1865.

10. To the same Act the following shall be added, namely :—

Surrender of re-
voked probate or
letters of adminis-
tration.

“333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

“(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.”

Probate and Administration Act, 1881.

Amendment of
section 50, Act V,
1881.

11. After the 4th clause of the *explanation* to section 50 of the Probate and Administration Act, 1881, the following shall be added, namely :—

“5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

12. For the portion of section 76 of the same Act, beginning with the words “he having undertaken to administer the same” and ending with the words “within one year from the same date” the following shall be substituted, namely :—

“he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.”

13. For the portion of section 77 of the same Act beginning with the words “he having undertaken to administer the same” and ending with the words “within one year from the same date” the following shall be substituted, namely :—

“he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.”

Substitution of
new section for sec-
tion 90, Act V, 1881.

14. For section 90 of the same Act the following shall be substituted, namely :—

Power of executor
or administrator to
dispose of property.

“90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

“(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the Will appointing him, unless Probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

“(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

“(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

“(5) Before any probate or letters of administration is or are granted under this Act, there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

“(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.”

(Notes).

(General).

(1) Scope of section.

S. 90 of the Probate and Administration Act (V of 1881) as amended by Act VI of 1889, s. 14, gives an executor merely the ordinary powers of sale that an owner would have in so far as they are not limited by the Will, and as such, those powers are subject to the usual rules of equity.
23 B. 342. G

(General)—(Concluded).

- (2) Executor and residuary legatee, power of—"Person interested in the property," meaning of.

D, residuary legatee under a Will, having obtained an order for grant of probate in his favour, sold certain properties covered by the Will to J. In execution of a decree passed against D in his personal capacity, the properties were attached, and J preferred a claim on the ground of his purchase. The claim was allowed and the properties were released from attachment. In a suit brought by the decree-holder for a declaration that the properties were liable to be sold in execution of his decree. It was held—

- (1) that the position of D under the Will being not merely that of an executor but that of a residuary legatee as well, and the restrictions imposed upon D by the Will being invalid under the ruling in (*Ashutosh Dutt v. Doorga Churn Chatterjee*), D had power to make the alienation in favor of J. H
- (2) that the words "person interested in the property" in subsection (4) of s. 90 of the Probate and Administration Act (V of 1881), as amended by s. 14 of Act VI of 1889, must mean a person interested independently of the executor whose alienation is sought to be avoided. H-1
- (3) The plaintiff deriving his interest as creditor of D in his personal capacity, and not as creditor of the estate of the testator, was not entitled to avoid the alienation under that section, even had it been invalid. 23 C. 446. I

Substitution of
new section for section
98, Act V, 1881.

15. For section 98 of the same Act the following shall be substituted, namely:—

Inventory and account.

"98. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

"(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

"(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

“(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.”

16. In section 99 of the same Act, for the words “it is sought to obtain a grant” the words “a grant has been made,” and for the words “the person applying for administration” the word “administrator” shall be substituted.

Amendment of section 99, Act V, 1881.

17. To the same Act the following shall be added, namely :—

Addition to Act V, 1881.

“(157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of revoked probate or letters of administration.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.”

Court Fees Act, 1870 ¹.

Amendment of Act VII, 1870, and Act I, 1879.

18. (1) [*Repeal of Article 16 (Sch. 2), Act 7 of 1870.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

(2) In article 6 of the second schedule to the Court-fees Act, 1870, for the words “Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority” the following words shall be substituted, namely :—

“Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1882, or the Code of Civil Procedure.”

(3) & (4) [*Amending the Indian Stamp Act, 1879.*] *Rep. by the Indian Stamp Act, 1899 (II of 1899).*

(Notes).

1.—“Court Fees Act, 1870.”

N.B.—The words “and Indian Stamp Act, 1879” in the heading were repealed by the Indian Stamp Act, 1899.

Miscellaneous.

19. Notwithstanding anything in section 90 of the Probate and Administration Act, 1881, a disposal of property by an executor or administrator who was appointed before the commencement of this Act, and to whom the provisions of that section were applicable, shall not be void by reason only that the consent of the Court to the disposal of the property was not obtained.

20. [*Recovery of penalties and forfeitures under Act VII, 1870.*] *Rep. by the Court-fees Amendment Act, 1899 (II of 1899), S. 4.*

21. [*Repeal of part of section 7 (3), Bengal Act 7 of 1880.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

THE
PROBATE AND ADMINISTRATION
ACT

(ACT II OF 1890)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY
T. A. VENKASAWMY ROW,
TRICHINOPOLY AND MADRAS.

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THE
PROBATE AND ADMINISTRATION ACT, 1890.
(ACT II OF 1890)¹.

[PASSED ON THE 14TH FEB. 1890.]

*An Act to amend Acts XVII of 1864, X of 1865, II of 1874
and V of 1881.*

WHEREAS it is expedient to amend Act XVII of 1864 (*An Act to constitute an Office of Official Trustee*), the Indian Succession Act, 1865, the Administrator General's Act, 1874, and the Probate and Administration Act, 1881; It is hereby enacted as follows:—

(Notes).

I.—“Act II of 1890.”

(1) **Statement of Objects and Reasons.**

For Statement of Objects and reasons, *See Gazette of India*, 1889, p. 195. A

(2) **Report of Select Committee.**

For Report of the Select Committee, *See Gazette of India*, 1890, Pt. V, p. 15. B

(3) **Proceedings in Council.**

For Proceedings in Council, *See Gazette of India*, 1889, Pt. VI, pp. 145 & 149 and *Ibid.* 1890, pt. VI, p. 16. C

(4) **Civil Rules of practice for observance by Subordinate Courts in Madras.**

For Civil Rules of practice by the High Court, Madras, under this Act, the Civil Procedure Code and certain other Acts, for observance by the Subordinate Civil Courts of that Presidency, except the Madras Small Cause Court, *See Fort St. George Gazette*, 1905, supplement, p. 1. D

(5) **Act where declared in force.**

(a) Ss. 9 to 15 of the Act have been declared in force in the Santhal Parganas by S. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas justice and Laws Regulation, 1899 (III of 1899), Ben. Code, Vol. I, *See Calcutta Gazette*, 1892, Pt. I, p. 448. E

(b) So far as this Act amends Acts X of 1865, II of 1874, and V of 1881, it is in force in Upper Burma (except the Shan States) as being part of those Acts, declared in force there by the Burma Laws Act, 1898, (XIII of 1898), *See the first Schedule of the Act.* F

(c) The whole Act, II of 1890, however, as a separate Act had been previously extended there by notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *See Gazette of India*, 1892, Pt. I, p. 94. G

(d) So far as it amends the Administrator-General's Act, 1874 (II of 1874), it has been extended to the Shan States, *See the Shan States Laws and Criminal Justice Order*, 1895, Bur. Gazette, 1895, Pt. I, p. 262. H

ACT XVII of 1864.

1. In section 1 of Act XVII of 1864, before the definition of the expression “High Court,” the following shall be inserted, namely:—
Addition to section 1, Act XVII, 1864.

"The word 'Government' shall mean, in relation to the Presidency of Fort William in Bengal, the Governor-General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and, in relation to the Presidency of Bombay, the Governor of Bombay in Council."

Insertion of new section after section 1, Act XVII, 1864.

2. After section 1 of the said Act the following shall be inserted, namely:—

2. In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George and the Presidency of Bombay shall, as regards all persons for whom the Governor-General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras and the Presidency of Bombay, respectively, as those expressions are severally defined in the law for the time being in force relating to the office and duties of Administrator General."

Construction of references to Presidencies.

Substitution of new section for section 5.

3. For section 5 of the said Act the following shall be substituted, namely:—

Appointment, suspension and removal of Official Trustees.

"5. Every Official Trustee appointed under this Act shall be appointed and may be suspended or removed from his office by the Government."

Amendment of section 6, Act XVII, 1864.

4. In section 6 of the said Act, for the words "Chief Justice by whom he is appointed" the word "Government" shall be substituted.

Amendment of section 7, Act XVII, 1864.

5. For the portion of section 7 of the said Act beginning with the words "It shall be lawful for the Chief Justice of the High Court" and ending with the words "it shall be lawful for the Chief Justice to appoint some person to officiate as Official Trustee" the following shall be substituted, namely:—

"It shall be lawful for the Government from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court. Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as Official Trustee."

Addition to section 11, Act XVII, 1864.

6. To section 11 of the said Act the following shall be added, namely:—

"Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration, in respect of the capital moneys, sums and rents

aforesaid, or any of them, to a commission at rates or a rate to be specified in the order and exceeding the rates or rate hereinbefore in this section prescribed."

Addition of sections to Act XVII, 1864.

7. To the said Act, after section 32, the following shall be added, namely :—

"33. The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

Compliance with requisitions for returns.

"34. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India,—

Division of the Presidency of Fort William in Bengal into Provinces.

- (a) divide the Presidency of Fort William in Bengal into so many Provinces as he thinks fit,
- (b) define the limits of each of those Provinces, and
- (c) appoint an Official Trustee for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—

- (i) the office of Official Trustee of Bengal shall cease to exist :
- (ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein :
- (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor-General in Council :
- (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf :
- (v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge or sole Judge, as the case may be, of a High Court appointed by the Governor-General in Council under clause (iv) of this sub-section, and the expression 'Advocate-General' a Government Advocate or other officer appointed by the Governor-General in Council to discharge for a Province the functions under this Act of an Advocate-General for a Presidency : and,

- (vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province, be construed, so far as may be, to apply to the Official Trustee appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

(3) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (1)."

Official Trustees
holding office at
commencement of
this Act.

8. Every person holding the office of Official Trustee at the commencement of this Act shall be deemed to have been appointed under Act XVII of 1864 as amended by this Act.

The Indian Succession Act, 1865.

Addition of new
section after section
326, Act X, 1865.

9. After section 326 of the Indian Succession Act, 1865, the following shall be inserted, namely:—

" 326-A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

Transfer of assets
from British India
to executor or admin-
istrator in country
of domicile for dis-
tribution.

The Administrator-General's Act, 1874.

10. In clause (b) of the definition of the expression " Presidency of Bengal " in section 3 of the Administrator-General's Act, 1874, the word " Burma " shall be substituted for the words " British Burma," and to clause (a) of the definition of the expression " Presidency of Bombay " in section 3, Act II, 1874. Amendment of definitions of " Presidency of Bengal " and " Presidency of Bombay " in section 3, Act II, 1874.

" and under the administration of the Chief Commissioner of British Baluchistan " shall be added.

11. (1) For the first paragraph of section 37 of the said Act, as amended by section 5 of the Administrator-General's Act, 1881, beginning with the words " If in cases falling within section 36 " and ending with the words " as if such letters had been granted to him," the following shall be substituted, namely:—

Substitution of new paragraph of first paragraph of section 37, Act II, 1874.

" If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased, obtains, within three months, a certificate from the Administrator-General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a Hindu, Muhammadan, Parsee or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, the Administrator-General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him ; "

(2) Repeal of part of section 5 of the Administrator-General's Act, 1881 (IX of 1881). Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Addition of new section after section 41, Act II, 1874.

12. After section 41 of the said Act the following shall be inserted, namely :—

" 41-A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country, the holder of the certificate granted under section 36 or section 37, or the Administrator-General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after

Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

Addition to section 64, Act II, 1874.

13. To section 64 of the said Act the following shall be added, namely :—

"The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

- (a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects,
- (b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant, and
- (c) the relief of the immediate necessities of the family of the deceased, and nothing in section 279, section 280 or section 281 of the Indian Succession Act, 1865, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made."

Addition to Part VI, Act II, 1874.

14. To Part VI, and after section 66, of the said Act the following shall be added, namely :—

"67. The Administrator-General shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper."

Compliance with requisitions for returns.

Addition to Act II, 1874, of a Part respecting the division of the Presidency of Bengal into Provinces.

15. To the said Act, after Part VI and section 67 thereof, the following shall be added, namely :—

"PART VII.

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

68. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the office of the Administrator-General of Bengal, may, by notification in the Gazette of India,—

Division of the Presidency of Bengal into Provinces.

(a) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,
(b) define the limits of each of those Provinces, and
(c) appoint an Administrator-General for each Province,
and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—

- (i) the office of Administrator-General of Bengal shall cease to exist :
- (ii) the Administrator-General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Administrator-General of Bengal had and performed as Administrator-General therein :
- (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor-General in Council :
- (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator-General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator-General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had :
- (v) in the foregoing provisions of this Act the word ' Presidency ' shall be deemed to include a Province, the expression ' Presidency-town ' the place of sitting of a High Court appointed by the Governor-General in Council under clause (iv) of this sub-section, and the expression ' Advocate-General ' a Government Advocate or other officer appointed by the Governor-General in Council to discharge for a Province the functions under this Act of an Advocate-General for a Presidency :
- (vi) the provisions of this Act with respect to the commission of the Administrator-General of Bengal shall regulate the commission payable to the Administrator-General of a Province, and

(vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment with respect to the Administrator-General of Bengal, shall, in relation to a Province, be construed so far as may be, to apply to the High Court and Administrator-General, respectively, appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces and to or in which the Administrator-General of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Administrator-General of the Province in which the town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator-General of Bengal.

(3) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (1).

(4) Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into Provinces under this section, the Administrator-General of the Province in which the town of Calcutta is comprised shall be deemed to be the Administrator-General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863."

The Probate and Administration Act, 1881.

Addition of new section after section 145, Act V, 1881.

16. After section 145 of the Probate and Administration Act, 1881, the following shall be inserted, namely :—

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

"145-A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

THE
ADMINISTRATION OF ESTATES
OF NATIVE CHRISTIANS ACT.

(ACT VII OF 1901).

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

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T. A. VENKASAWMY ROW,
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THE ADMINISTRATION OF ESTATES OF NATIVE CHRISTIANS ACT, 1901.

(ACT VII OF 1901.)¹

[Passed on the 22nd March, 1901.]

An Act to place Native Christians in the same position as Hindus, Muhammadans and Buddhists in the matter of obtaining letters of administration and for other purposes.

WHEREAS it is expedient to place Native Christians on the same footing as Hindus, Muhammadans and Buddhists in the matter of obtaining letters of administration ; to exempt them from the operation of certain provisions of the Administrator General's Act, 1874, from which Hindus, II of 1874. Muhammadans, Parsis and Buddhists are exempted ; and to enable them to obtain certificates under the Succession Certificates Act, 1889, in certain VII of 1889. cases ; It is hereby enacted as follows :—

(Notes).

1.—“ Act VII of 1901.”

(1) Statement of Objects and Reasons.

For—, See Gazette of India, 1901, Pt. V, p. 5.

A

(2) Report of Select Committee.

For—, See Gazette of India, 1901, Pt. V, p. 95.

B

(3) Proceedings in Council.

For—, See (*Ibid*), 1901, Pt. VI, pp. 4, 12, 105 and 123.

C

(4) Act where declared in force.

The Act has been declared in force in the Santhal Parganas by notification under S. 3 of the Santhal Parganas Settlement Regulation, 1872 (III of 1872). See Calcutta Gazette, 1902, Pt. I, p. 310.

D

Short title and commencement.

1. (1) This Act may be called the Native Christian Administration of Estates Act, 1901 ; and

(2) It shall come into force at once.

2. In this Act, the expression “ Native Christian ” means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion.

Definition.

Exemption of Native Christians from sections 190 and 239, Act X, 1865.

3. Sections 190 and 239 of the Indian Succession Act, 1865, shall not apply to any part of the property X of 1865. of a Native Christian who has died intestate.

Exemption of
II of 1874. Native Christians
from certain sec-
tions of Act II of
1874.

4. In sections 16, 17, 18, 37 and 64 respectively of the Administrator-General's Act, 1874, before the word "Hindu," wherever it occurs, the word "Native Christian" shall be inserted :

Provided that nothing contained in this section shall affect any probate, letters of administration or certificate granted or vested under the said Act.

5. Nothing contained in section 1, sub-section (4) of the Succession
VI of 1889. Certificates Act, 1889, shall be deemed to prevent the
Grant of certi- grant of a certificate to any person claiming to be
ficates under Act VII entitled to the effects of a deceased Native Christian,
of 1889 to Native or to any part thereof, with respect to any debt or
Christians in cer- security, by reason that a right thereto can be estab-
tain cases. lished by letters of administration under the Indian Succession Act, 1865.
X of 1865.

THE
ADMINISTRATORS GENERAL
AND OFFICIAL TRUSTEES ACT.

(ACT V OF 1902.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY
T. A. VENKASAWMY ROW,
TRICHINOPOLY AND MADRAS.

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1911.

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THE ADMINISTRATORS GENERAL AND OFFICIAL TRUSTEES ACT, 1902.

(ACT V OF 1902 1).

[PASSED ON THE 14TH FEB. 1902.]

An Act further to amend the Law relating to Administrators-General and Official Trustees.

WHEREAS it is expedient further to amend the law relating to Administrators-General and Official Trustees; it is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called the Administrators-General and Official Trustees Act, 1902; and

(2) It shall be deemed to have come into force on the first day of January, 1902.

(Notes).

1.—“ Act V of 1902.”

(1) Statement of Objects and Reasons.

For Statement of Objects and Reasons, *See* Gazette of India, 1901, Pt. V, p. 391. **A**

(2) Report of Select Committee.

For report of the Select Committee, *See* Gazette of India, 1902, Pt. V, p. 31. **B**

(3) Proceedings in Council.

For proceedings in Council, *See* Gazette of India, 1901, Pt. VI, p. 231; *Ibid.*, 1902, Pt. VI, pp. 6 and 21. **C**

(4) Act, where declared in force.

The Act has been declared in force in the Santhal Parganas by notification under S. 3 (a) of the Santhal Parganas Settlement Regulation (III of 1872), Ben. Code, *See* Calcutta Gazette, 1903, Pt. I, p. 255. **D**

2. (1) The Government may appoint a Deputy to assist the Administrator-General as Administrator-General and, if he is

Appointment of Deputy Administrator-General and Official Trustee.

also Official Trustee, as Official Trustee; and the Deputy so appointed shall, subject to the control of the Government and the general or special orders of

the Administrator-General, be competent to discharge any of the duties and to perform any of the functions of the Administrator-General as Administrator-General or, if he is also Official Trustee, as Official Trustee.

(2) A Deputy appointed under sub-section (1) may be either a barrister or a solicitor or attorney, and, notwithstanding anything in the Administrator-General's Act, 1874, any Deputy so appointed may officiate as Administrator-General.

(Notes).

General.

- (1) **Suit against Administrator-General, if notice necessary—Administrator-General, if public officer.**

All estates in the hands of the Administrator-General, are held by him as Administrator-General, *i.e.*, as a public officer and in any suit instituted against him in respect of any Act purporting to be done by him in his official capacity he is entitled to notice under S. 424 of the Civ. Pro. Code. 8 C.W.N. 913. E

- (2) **Discharge by Court of an executor—Vesting of the property in the continuing executor.**

(a) The Court has power to discharge an executor on his own application if a proper case be made out.

(b) An executor so discharged remains liable for anything he has done or left undone while an executor—it only relieves him from the duties of his office from the date of the discharge. 29 B. 188=7 Bom.L.R. 195. F

- (3) **Probate application for—Official Trustee—Executor—Renunciation.**

(a) Where the Official Trustee expressed his intention of renouncing probate, but subsequently retracted:—

Held, that no formal renunciation having been made, he was not precluded from applying for probate. 35 C. 156. (5 C.W.N. Notes CLV. *F*.) G

(b) There is nothing under the Official Trustee's Act which precluded the Official Trustee from being appointed an executor and acting as such. 35 C. 156. H

3. (1) Notwithstanding anything in the Administrator-General's

Remuneration of
Administrator-
General as such and
as Official Trustee.

Act, 1874, or the Official Trustees Act, 1864, the Administrator-General may be remunerated by such fixed salary and allowances, and on such terms and subject to such conditions, as the Governor-General in Council may direct; and, where he is so remunerated, he shall be entitled to no further remuneration whatsoever, but shall transfer and pay to such officer, in such manner, and at such times, as the Governor-General in Council may, by general or special order, require, all moneys payable to and received by him as Administrator-General or, if he is also Official Trustee, as Official Trustee, by way of commission or other remuneration for his service, and the same shall be carried to the account and credit of the Government for the general purposes of the Government; and in such case all the expenses of the establishment necessary for the office of the Administrator-General, and, if he is also Official Trustee, for that of Official Trustee, including the provision of office accommodation, together with all other charges to which the said office or offices may be subject, shall be defrayed by the Government.

(2) Nothing in this Act shall be deemed to render the Government or the Administrator-General appointed after the commencement of this Act liable for anything done or purporting to be done by or under the authority of the Administrator-General before the commencement of this Act, or, where the Administrator-General is also Official Trustee, for

anything done or purporting to be done by or under the authority of any Official Trustee appointed before the appointment of the Administrator-General to be Official Trustee.

(3) The Government shall be deemed to be responsible for the civil liabilities of any Administrator-General remunerated by such fixed salary and allowances as aforesaid as Administrator-General or, if he is also Official Trustee, as Official Trustee.

(4) Notwithstanding anything in the Code of Civil Procedure, a suit to enforce any such civil liability as aforesaid shall be brought against the Administrator-General as Administrator-General or, if he is also Official Trustee, as Official Trustee, as the case may be, by his name of office; and no suit so brought shall abate by reason of the death, resignation, suspension or removal of the person holding the office of Administrator-General or Official Trustee.

4. (1) The second proviso to section 9, and section 56, of the Administrator-General's Act, 1874, are hereby repealed.

Repeal of part of section 9 and section 56, Act II, 1874, and provisions regarding private executors and administrators.

(2) The High Court of the Province may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

(3) No private executor or administrator shall be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator-General by or under the Administrator-General's Act, 1874.

5. (1) So far as regards the Administrator-General of any of the Presidencies of Bengal, Madras and Bombay, the High Court at the Presidency-town may, on application made to it, give to such Administrator-General any general or special directions in regard to any estate in his charge or any trust of which he is the Official Trustee, or in regard to the administration of any such estate or trust.

Power for High Court to give directions regarding administration of estate or trust.

(2) The High Court of the Province may, in like manner, give similar directions to any private executor or administrator other than the Administrator-General acting officially.

6. The High Court of the Province may make rules for assigning jurisdiction under the Administrator-General's Act, 1874, of the Official Trustees Act, 1864, to subordinate Courts, and for defining such jurisdiction.

Power for High Court to make rules assigning jurisdiction.

7. The Administrator-General acting as such or as Official Trustee, and any private executor or administrator, may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

General powers of administration.

(a) on such acts as may be necessary for the proper care and management of any property belonging to any estate or trust administered by him; and,

(b) with the sanction of the High Court at the Presidency-town in the case of the Administrator-General, or with that of the High Court of the Province in the case of a private executor or administrator, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

8. Notwithstanding anything in the Administrator-General's Act, 1874, or in any other enactment or rule of law for the time being in force, the Governor-General in Council may, by general or special order, direct that, where a subject of a foreign State dies in British India and it appears that there is no one in British India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any consular officer of such foreign State, be granted to such consular officer on such terms and conditions as the Court may, subject to any rules¹ made in this behalf by the Governor-General in Council by notification in the *Gazette of India*, think fit to impose.

Provision for administration by consular officer in case of death in certain circumstances of foreign subject.

(Note).

1.—“Subject to any rules, etc.”

N.B.—For such rules made in respect of Japanese Consular Officers and Consular Officers of the United States of America, See Gen. R. and O; Gazette of India, 1907, Pt. I, p. 373, and *Ibid.*, 1908, Pt. I, p. 95.

9. In section 256 of the Indian Succession Act, 1865, as amended by section 6 of the Probate and Administration Act, 1889, after the word “administration” the words and figures “other than a grant under section 212” shall be inserted.

Amendment of section 256, Act X, 1865.

Act to be read with Acts II, 1874, and XVII, 1864.

10. This Act shall be read with, and taken as amending, the Administrator General's Act, 1874, and the Official Trustees Act, 1864.

THE
HINDU HEIRS' RELIEF ACT

(BOMBAY ACT VII OF 1866)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

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1911.

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THE HINDU HEIRS' RELIEF ACT.

(BOMBAY ACT VII OF 1866.)

(The assent of the Governor-General of India to this Act was first published by the Governor of Bombay on the 31st May, 1866.)

An Act to limit the liability of a son, grandson or heir of a deceased Hindu for the debts of his ancestor, and the liability of the second husband of a Hindu widow for the debts of her deceased husband, and otherwise to amend the law of debtor and creditor.

WHEREAS, according to the law in force, as applied to the Hindus by the High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction, no son or grandson of a deceased Hindu is liable for the debts of his ancestor merely by reason of his being such son or grandson, and no son, grandson or other heir of a deceased Hindu, who has received assets of the deceased, is merely from that circumstance liable for the debts of his ancestor beyond the amount of the assets received, and no person marrying a Hindu widow is liable in consequence of such marriage for the debts of her former or any prior deceased husband ;

and whereas a different law is applied to Hindus by the Civil Courts which exercise jurisdiction in places beyond the local limits of the ordinary original civil jurisdiction of the said High Court, and it is expedient to amend the law as applied by such other Courts, and to make the law in that respect uniform throughout the Presidency of Bombay ;

and whereas it is also expedient to limit the liability of a Hindu for a family-debt contracted when he was unborn or under twenty-one years of age ;

It is hereby enacted and declared as follows :

(Note).

Act, where declared in force.

Bombay Act VII of 1866 has been declared, by notification under the Scheduled Districts Act, 1874, to be in force in the province of Sindh.

Hindu son or grandson not liable as such for debt of ancestor.

1. No son or grandson of a deceased Hindu shall, merely by reason of his being such son or grandson, be liable to be sued for any of the debts of such deceased Hindu.

Heir to be liable as representative of deceased ancestor only to extent of assets received.

2. No son, grandson or heir of a deceased Hindu, who has by himself or his agent received or taken possession of any property belonging to the deceased, shall be liable personally for any of the debts of the deceased, merely by reason of his having so received or taken possession of any such property ; but the liability of such son, grandson or heir, in respect of such debts, shall be as the representative of such deceased Hindu, and shall be limited to paying the sum out of

and to the extent of the property of the deceased which such son, grandson or heir, or any other person by his order or to his use, has received or taken possession of as aforesaid, and which remains unapplied :

Provided that, if any part of such property so received or taken possession of as aforesaid shall not have been duly applied by such son, grandson or heir, he shall be liable personally for such debts to the extent of the property not duly applied by him.

Liability in respect of assets received and not applied.

3. (Pending suits). *Repealed by Act XII of 1873.*

Husband of Hindu widow not liable for debt of deceased former husband.

4. No person who has married a Hindu widow shall, merely by reason of such marriage, be liable for any of the debts of any prior deceased husband of such widow.

5. Where a debt is contracted after this Act shall come into operation by one or more members of an undivided Hindu family, under such circumstances as that the same forms the debt of the undivided family, no member of such undivided family, who is unborn or under the age of twenty-one years at the time of the contracting of such debt, shall be liable personally to pay the same but such member shall only be liable to pay the same out of and to the extent of the property of the undivided Hindu family and of the separate property if any, belonging to any deceased members of the undivided family who were above the age of 21 years at the time of the contracting the same, received or taken possession of by such member or any other person by his order or to his use and remaining unapplied, unless any part of such property so received or taken possession of as aforesaid shall not have been duly applied by such member, in which case he shall be further liable personally for such debt to the extent of the property not duly applied by him.

Liability of member of undivided Hindu family for family debts contracted during his minority.

6. Except as provided in S. 5, nothing in this Act contained shall be construed as limiting or affecting the liability of any person as surviving member or one of the surviving members of an undivided Hindu family for any debt contracted under such circumstances as that the surviving member or surviving members of such undivided family is or are by the law now in force liable to pay the same.

Saving of liability of surviving member of undivided Hindu family.

7. The term "debts," as used in this Act, shall be construed to include all liabilities arising out of any claims which could or might be enforced against a deceased Hindu himself if living, and for which a suit would lie against his representative.

Interpretation.

8. (Commencement of Act). *Repealed by Act XII of 1873.*

Short title.

9. This Act may be cited for all purposes as the Bombay Hindu Heirs' Relief Act, 1866.

THE
MALABAR WILLS ACT, 1898

(ACT V OF 1898)

(WITH THE CASE-LAW THEREON)

COMPILED AT
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THE MALABAR WILLS ACT, 1898.

(ACT V OF 1898.)

An Act to declare the testamentary power of persons governed by the Marumakkathayam or the Aliyasantana Law of Inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

WHEREAS doubts have arisen regarding the testamentary power of persons governed by the Marumakkathayam or the Aliyasantana Law of Inheritance; and whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons; It is hereby enacted as follows :

PART I.

PRELIMINARY.

- | | |
|---------------|--|
| Short title. | 1. 1. This Act may be called "The Malabar Wills Act, 1898." |
| Local extent. | 2. It extends to the whole of the Presidency of Madras; and |
| Commencement. | 3. It shall come into force on such date as the Local Government by notification shall appoint in this behalf: |

Provided that nothing in this Act shall be deemed to affect the Hindu Wills Act, 1870.

Interpretation clause.	2. In this Act unless there be something repugnant in the subject or context.
------------------------	---

- | | |
|--------------|--|
| "Minor." | 1. "Minor" means any person who shall not have completed the age of 18 years. |
| 2. "Will" | means any legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death. |
| "Will." | |
| 3. "Codicil" | means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will. |
| "Codicil." | |

PART II.

OF WILLS.

- | | |
|--|--|
| 3. This part shall apply to persons domiciled in the Presidency of Madras who are governed by the Marumakkathayam or the Aliyasanthana Law of Inheritance. | |
| Persons to whom this part shall apply. | |

4. Every person of sound mind and not a minor may by will dispose of property which he could legally alienate by gift *inter vivos* and shall be deemed to have been always competent so to dispose of such property.

Persons capable of making wills.

Explanation I.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will, if they are able to know what they do by it.

Explanation II.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation III.—No person can make a will while he is in such a state of mind whether arising from drunkenness or from illness or from any other cause that he does not know what he is doing.

5. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained by fraud, coercion or importunity.

6. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Will may be revoked or altered.

Saving clause.

7. Nothing contained in section 4 shall—

- (a) affect any right established before the commencement of this Act by a final decree of a Court of competent jurisdiction ;
- (b) authorize a testator to deprive any persons of any right of maintenance of which, but for sec. 4, he could not deprive them by will ;
- (c) affect any law of intestate succession or authorize any testator to create in property any interest which he could not have created prior to this Act.

PART III.

OF THE EXECUTION, ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

8. This part shall apply to persons governed by the Marumakathayam or the Aliyasantana Law of inheritance whether they are domiciled in the Presidency of, Madras or not.

Persons to whom this part shall apply.

9. All wills and codicils made on or after the date of the commencement of this Act within the Presidency of Madras and all such wills and codicils made outside the said Presidency, so far as they relate to immoveable property situated within the said Presidency, must be executed according to the following rules :—

Execution of will and codicils.

1st—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

2nd—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

3rd—The will shall be attested by two or more witnesses each of whom must have seen the testator sign or affix his mark to the will or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

10. If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions such document shall be considered as forming a part of the will or codicil in which it is referred to.

Incorporation of papers by reference.

11. No person by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Witness not disqualified by interest or by being executor.

12. No will or codicil, nor any part thereof, shall be revoked otherwise than (1) by another will or codicil, or (2) by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or (3) by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of will or codicil.

13. No obliteration, interlineation or other alteration made in any will after the execution thereof, shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

Effect of obliteration, interlineation or alteration in a will.

14. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

15. No will or codicil made by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea and no revocation by such person of his will or codicil shall be deemed invalid by reason only of such will, codicil or revocation not being made in accordance with the provisions of this part.

THE
SUCCESSION CERTIFICATE ACT.

(ACT VII OF 1889.)

(WITH THE CASE-LAW THEREON)

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THE SUCCESSION CERTIFICATE ACT, 1889.

(ACT VII OF 1889).

[PASSED ON THE 8TH MARCH, 1889.]

An Act to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons ; It is hereby enacted as follows :—

(Notes).

(General).

(1) **Statement of Objects and Reasons.**

For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 60. A

(2) **Report of the Select Committee.**

For Report of the Select Committee, see Gazette of India, 1889, Pt. V, p. 45. B

(3) **Proceedings in Council.**

For Proceedings in Council, see Gazette of India, 1888, Pt. VI, pp. 92 and 136, and Gazette of India, 1889, Pt. VI, p. 48. C

(4) **Civil Rules of Practice made by High Court of Madras.**

For Civil Rules of Practice made by the High Court of Madras under this Act, the Code of Civil Procedure and certain other Acts, for observance by the Subordinate Civil Courts of that Presidency, see Fort St. George Gazette, 1905, Supplement, Pt. 1. D

(5) **Act where declared in force.**

(1) The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). E

(2) The Act has also been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), S. 3, and in the Angul District by the Angul District Regulation, 1894 (I of 1894), S. 3. F

(3) It has been declared in force in the Santhal Parganas by notification under S. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899). G

(6) **History of the Act.**

The history of this enactment (Act VII of 1889) goes back to 1881. In that year a proposal was made that Act XXVII of 1860 and the Court-fees Act should be amended so as to impose upon a person taking out a certificate a fee of two per cent upon the entire value of the estate

Act VII of 1889 (SUCCESSION CERTIFICATE).**General—(Continued).**

of the deceased. The proposal was based on three grounds:—first, that the lower fee taken on certificates under Act XXVII of 1860 tempted persons to substitute the certificate procedure for the more perfect system of taking out administration; second, that the system of certificates gave an advantage to some classes of the community over others, who could proceed only by the regular system of administration; and, third, that the grant of a certificate was by large classes of the community regarded, though erroneously, as equivalent to the establishment of a representative title as against the world.

These proposals were referred to Local Governments in April, 1881, but the weight of local authority was against giving any new character to the Certificate Act; it was considered that the mass of the people were not ripe for the imposition of a regular system of administration as a condition precedent to the realization of the deceased's debts. But it was shown that the neglect and evasion of the law which were among the grounds of the above proposals were extremely common. Though the law nominally imposed a two per cent duty, it practically left it quite optional with the payer whether he should pay it or not.

First of all, a person could obtain a certificate on a valuation of Rs. 20 only, and having got it could apply it to the collection of a debt of Rs. 20,000. The Court-fees Act, indeed, laid down that the holder had to file an account after a year; but the provision was not effective, and, as a matter of fact, was continually evaded. So also it was found that applicants occasionally pursued their cases in the Court so far as to have themselves declared entitled to a certificate, but stopped at that point in order to avoid payment of the duty required upon its actual issue. And the law itself contained an express provision against absence of certificate being considered a disqualification even in the case of a refractory debtor sued in Court; for it is provided that the Court should not admit the plea unless it considered it was founded upon a real doubt as to the title of the claimant.

To remedy these defects in the law, Major Baring introduced in the Imperial Legislative Council in March, 1883, a Bill to amend Act XXVII of 1860. The main provision of the Bill was that the certificate should be a certificate for the collection only of such debts as were specifically enumerated in it. Following out the principle that there should be no compulsory administration, the Bill was so worded that the certificate holder was not obliged to take out a certificate for, or pay duty upon, debts which he believed he could amicably collect without one, but he could not sue for any debt unless it was first expressly included, and of course he had a strong motive to insert, and pay duty upon, any debts regarding the collection of which he was not quite assured.

This Bill was referred to Local Governments, and was for the most part favourably reported on. Several improvements in detail were recommended; and the only objection made to it on principle was that the certificate should be made to compulsorily include all the debts due to the estate, and even the whole estate. But the Government was not prepared to adopt the view that no powers in respect

General—(Continued).

of a deceased's estate should be given which fell short of complete administration; in fact, the primary principle of the Bill was the protection of debtors and not the administration of the estate.

While this was going on, and before the Bill of 1883 had reached the stage of reference to a Select Committee, the Government of Bengal laid before the Government of India a representation regarding the absence of any security for the due realization of the stamp revenue both in the case of applicants for certificates and in the allied cases of applications for administration and for guardianship.

The whole question was again submitted to local authorities, executive and judicial, and a Bill was introduced into the Council as the outcome of such further amendments and suggestions as have received general approval.

So far as regards the Bill relating to certificates, it will be observed that the Government still adhered to the voluntary principle. They had rejected proposals to include the whole of the debts of the estate, and not only those which will not be amicably settled; they had also rejected proposals to attach a penalty to the non-submission of accounts, and proposals to give rewards to informers who bring to notice evasions in respect of valuation. And although the certificate is not valid for the enforced recovery of any debt not mentioned in it, the legislature wanted to protect any debtor who in good faith pays such a debt to the holder.

The Bill was not a fiscal bill in the sense of its imposing any new duties or taxes, but it was expected to have the effect of increasing the revenue by preventing what were reported to be the frequent evasions of the duties prescribed by the existing law.

In 1883, it was thought sufficient to amend the Act of 1860, but it was subsequently thought best, considering the additional changes proposed afterwards, to abolish the old Act and substitute an entirely new one." See Gazette of India, 25th August, 1883, Pt. VI, pp. 92, 93. H

(7) Defects in the old law—Reasons for the passing of Act VII of 1889.

The law existing at the time of the passing of Act VII of 1889 regarding the grant of certificates was contained in Act XXVII of 1860, but that Act did not provide either for a stamp-duty or for the entry in the certificate of the debts to be collected. In the Court-fees Act, VII of 1870, schedule I, article 12, it was provided that a duty of 2 per cent should be levied on the amount or value of the property in respect of which the certificate is granted, and it was further provided that the person to whom the certificate was granted, if the effect to be dealt with exceeded Rs. 1,000 in value, should, after the expiration of twelve months from the granting of the certificate, and at such other dates as the Court might require, file a statement on oath of all moneys recovered or realised by him under the certificate. The latter provision had been to a great extent a dead letter. The person wishing to obtain a certificate entered, in the first instance, only a portion of the debts due to the estate, obtained a certificate entitling him to collect all the debts due to the estate, collected under the certificate, neglected to certify to the Court the total amount of debts collected, and

General—(Continued).

in that way escaped payment of a large portion of the fee which the law intended him to pay.

“Evasion had also been facilitated by the provisions of S. 2 of Act XXVII of 1860, which enabled a person not holding a certificate to recover a debt in Court if the Court was satisfied that payment of the debt was withheld from fraudulent and vexatious motives and not from any reasonable doubt as to the party entitled.

“It was therefore provided in S. 6 of Act VII of 1889 that an application for a certificate must set forth the debts and securities in respect of which the certificate is applied for; and under S. 14 (1) such application must be accompanied by the deposit of the proper amount of fee.

“If the person applying for the certificate omits to enter any debt or security in his application, whether he does so through oversight or intentionally, and finds thereafter that he cannot collect the debt or deal with the security because it has not been so entered, he will be at liberty to apply to the Court to extend the certificate to such debt or security, but in such case he will be required to pay 3 per cent. on its amount instead of 2 per cent. This provision will have the effect of preventing an applicant from speculating on the possibility of being able to collect debts without entering them in his application and paying the proper fee. If an applicant chooses to speculate in this way, he will run the risk of having to pay 3 instead of 2 per cent. See Gazette of India, 16th March, 1889, Pt. VI, pp. 43—54.

(8) Object of the enactment.

“The Act is not designed to furnish a complete system of administration of estates, but rather to give security to those who are called upon to pay debts to the representatives of deceased persons in the absence of probate or letters of administration. In this country, where the personal law varies so greatly, according to the origin or religion of the individual, it is necessary that some simple method should exist whereby debtors to a deceased creditor may be certified that they will not be called upon to pay their debts more than once. If a will is left and probate obtained, or if letters of administration are taken out, they have this security by paying the debts to the executor or administrator; but these cases are comparatively few, and, where the succession is disputed, the debts either remain unpaid or the debtor runs the risk of paying the wrong person. To obviate this difficulty a system was long ago introduced of granting certificates to persons claiming to be “the representatives of deceased Hindus, Muhammadans and others not usually designated as British Subjects,” which served the double object (1) of conclusively establishing the representative title of the holder against all debtors to the deceased, and (2) of affording full indemnity to all debtors paying their debts to the person in whose favour the certificate had been granted.

Act XXVII of 1860 was passed embodying the then existing law in British India generally, though Bombay had still in Regulation VIII of 1827, a special system of its own, which gave to the certificate holder rather more extensive powers and privileges than he enjoyed in other provinces. The present enactment also in deference to the wishes of the

General—(Continued).

Bombay Government has left this Regulation unrepealed, though modifying it in certain respects; while it has absolutely repealed Act XXVII of 1860. See Gazette of India, 16th March, 1889, Pt. VI, pp. 48—54. I

(9) Reasons for the passing of the present enactment.

“Theoretically under Act XXVII of 1860, no Hindu or Muhammadan could have the benefit of the aid of the Courts to enable him to collect debts as representative of a deceased person without obtaining a certificate and paying duty upon the amount of outstanding debts due to the estate. But in practice the result to the State in the way of taxation was very small. (i) The first source of evasion was that the Court might dispense with the certificate if it thought the objection of the debtor to the creditor's title was frivolous. This was very largely done by some Courts. (ii) Secondly, the applicant for the certificate seldom or never put down anything like the real amount of the outstandings of the estate. Having got the certificate upon a small payment, he proceeded to collect very large amounts of outstandings. (iii) Thirdly, the applicant often used to get an order for a certificate and then never pay the duty or take out the certificate, but show the debtor a copy of the order as a proof of the title and collect on the strength of this. The Act was intended to remedy these defects. See Gazette of India, 16th March, 1889, Pt. VI, pp. 48—54. J

(10) Certificate of administration—Act XXVII of 1860—Object of Act—Trustees.

- (a) The object of Act XXVII of 1860, is, not to enable parties to litigate questions of disputed title, but to enable debtors to pay the debts due by them with safety to the representatives of deceased Hindus and others; and to facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same. In other words, the objects of the Act are to enable debtors to get sufficient acquittances when they pay money due to the estate of a deceased; and to preserve that estate from loss by giving some one the right to collect the debts, lest they should be lost, *e.g.*, by the operation of the law of limitation. The holder of a certificate is a trustee liable to account for the monies received by him to the legal heirs or representatives of the deceased. 8 C. 868. K
- (b) The appointment of a person to give a valid discharge to debtors of estates of deceased persons, and not the determination of nice and intricate questions of title to such estates, is the object of the Act. 30 C. 581. L

(11) Substitute of deceased plaintiff's representative, Applicability of Act to.

Whether the Act would apply not only to the case of a person claiming by succession to the original creditor, but also to a case where, upon the death of such person during pendency of suit, another person is substituted as plaintiff in his place, is an open question. 22 C. 143 (151). M

(12) Applicability of Act to award.

An award passed by arbitrators appointed without the intervention of Court may be filed in Court without a succession certificate under this Act. 16 B. 240. N

General—(Concluded).

(13) Reference of enquiry to Subordinate Courts.

(a) District Judges in the Bombay Presidency ought not to refer applications under Special Acts (such as this Act, Act X of 1870, &c.) to Assistant Judges for disposal. 16 B. 277 (281). O

(b) Although the expression "miscellaneous applications" in S. 16 of the Bombay Civil Courts' Act (XIV of 1869) may be large enough to include references by the Collector under the Land Acquisition Act (X of 1870), the latter part of S. 16, as it stood before that section was amended by Acts VII of 1889 and VIII of 1890, indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under special Acts for disposal. 16 B. 277. P

(14) Applicability of Act to Village Courts.

The provisions of the Act apply to suits in Village Munsiffs' Courts in the Madras Presidency. 21 M. 115. Q

(15) Inquiry as to existence of debt.

(a) There is no law or authority which requires a Court to find whether the debts alleged to be due to the estate of a deceased person are really due or not as a preliminary condition of the grant of a certificate under the Succession Certificate Act, 1889. 5 Bom. L.R. 721 = 28 B. 119. R

(b) The Succession Certificate Act, 1889, is intended for the protection of debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate under the Act, or is compelled by the decree of the Court to pay it to that person, he is lawfully discharged. There is nothing in the Act which either expressly or by necessary implication requires the Court granting a certificate to hold an inquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition of the grant. All that a Court has to do under the Act is to ascertain the right of a person to a certificate apart from the question of the existence or non-existence of the debts in respect of which he applies. 5 Bom. L.R. 721 = 28 B. 119. S

(16) Retrospective operation of Act.

The Act does not take away vested rights. It does not compel the production of a certificate of succession in suits instituted before the Act came into force. 16 M. 64 (66). T

Title, commencement, extent and application.

1. (1) This Act may be called the Succession Certificate Act, 1889.

(2) It shall come into force on the first day of May, 1889; and

(3) It extends to the whole of British India ⁽¹⁾ (inclusive of Upper Burma except the Shan States);

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865, or by probate of a will to which the Hindu Wills Act, 1870, applies, or by letters of administration with a copy of such a will annexed ².

(Notes).

1.--"British India."

Repeal of certain terms.

The words "inclusive of Upper Burma, except the Shan States," after the words "British India" in S. 1 (3) were repealed by the 5th schedule to the Burma Laws Act, 1898 (XIII of 1898). U

2.--"Cl. 4."

(1) Devisee's right to take out certificate.

This clause does not prohibit the grant of a certificate to an applicant under the will of a deceased. If the will is held to be genuine in a contest between the parties and if the Hindu Wills Act does not apply to it, the Court must grant the certificate. 18 B. 608 ; 16 B. 712. Y

(2) Will, application for a certificate under.

Clause 4 of section 1 of the Succession Certificate Act (VII of 1889) does not preclude an applicant from obtaining a certificate under the will of the deceased. 18 B. 608. W

(3) Application by executor for succession certificate—Will disputed—Jurisdiction to decide genuineness of will—Remand—Duty of Judge—Executor whether bound to take out probate.

The executors under a certain Will applied to the District Court for a certificate of administration under S. 6 of Act VII of 1889 to enable them to collect the debts due to the testator. The genuineness of the Will was disputed by a lady who applied for a certificate on the ground that she was the heir of the deceased. The District Judge rejected the applications on the ground that the validity of the Will could not be settled in a summary proceeding.

Held, remanding the suit for re-hearing, that the Judge had jurisdiction to decide upon the genuineness of the Will.

At the re-hearing, the heir of the deceased withdrew her application and the Judge held that, as the certificate was claimed by the executors as such, probate of the Will should be taken out and he therefore refused the application.

Held, on appeal, that the duty of the Judge in carrying out the remand order of the High Court was confined exclusively to determining whether the applicant or the heir was entitled to the certificate, and that he could not refuse the certificate, simply because the applicants might have asked for probate, as the case did not fall under S. 1, cl. 1 (4) of the Succession Certificate Act. 16 B. 712. X

(4) Will—Probate, necessity to take out.

(a) The last portion of the 4th clause to this section refers to a Will to which neither the Indian Succession Act nor the Hindu Wills Act applies. 2 A.L.J. 126. Y

(b) Consequently where a Hindu testator residing in the United Provinces left a will, *held* that there was nothing to prevent the devisee from applying for a succession certificate to collect the debts of the deceased. (*Ibid*). Z

N.B.—"Nothing in this sub-section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Native Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under the Indian Succession Act, 1865," *Vide* the Native Christian Administration of Estates Act, 1901 (VII of 1901), S. 5. A

Repeal.

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860 or any enactment repealed by that Act.

(3) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881, or any document, referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "District Court,"¹ subject to the other provisions of this Act and to the provisions of proviso (b) to section 23 of the Punjab Courts Act, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge: and

(2) "security"² means—

- (a) any promissory note, debenture, stock or other security of the Government of India;
- (b) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the Governor General in Council may, by notification in the *Gazette of India*, declare to be a security for purposes of this Act.

(Notes).

1.—"District Court."

Agent to Governor, Vizagapatam, if a District Judge.

- (a) S. 2, cl. (12) of the General Clauses Act of 1868, defines a District Judge as the Judge of a Principal Civil Court of Original Jurisdiction. 31 M. 362=3 M.L.T. 264=18 M.L.J. 252. **B**
- (b) Under S. 3 of Act XXIV of 1839 and rule X, cl. (4) of the rules framed thereunder, the Agent is the Judge of the Principal Court of Civil Jurisdiction within the Agency. The Agent is, therefore, a District Judge within the definition in S. 2, cl. (12) of the General Clauses Act, of 1868. (*Ibid*). **C**
- (c) The General Clauses Act of 1868 having been in force in 1889, when this Act was passed, the Agent to the Governor, Vizagapatam, was held to be District Judge and the Court presided over by him to be a District Court as defined in this section. (*Ibid*). **D**

2.—“Security.”

Deposit in bank, not included in definition.

The amount in deposit in a Bank is not “security” within the definition of the word in cl. (2) of this section. 28 A. 477 = A.W.N. (1906), 94, D1

Proof of representative title a condition precedent to recovery through the Court of debts from debtors of deceased persons.

4. (1) No Court shall—

- (a) pass a decree against a debtor of a deceased person for payment of his debt¹ to a person claiming to be entitled to the effects of the deceased person² or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor³ a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
- (ii) a certificate granted under section 36 or section 37 of the Administrator General’s Act, 1874⁴, and having the debt mentioned therein, or
- (iii) a certificate granted under this Act⁵, and having the debt specified therein⁶, or
- (iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or
- (v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word “debt” in sub-section (1) includes any debt except rent⁷, revenue or profits payable in respect of land used for agricultural purposes.

(Notes).**(General).**

N.B.—In revising this section the Select Committee had regard to the case reported in I.L.R. 13 C. 47.

(1) Scope of section.

- (a) The section is applicable even to suits instituted before the introduction of the Act. 16 A. 259 (F.B.). E
- (b) The Act does not apply to applications made before, but pending at, the time at which it came into force. 15 B. 79 (81). Cf. 16 A. 259, as to suits. F
- (c) **But**, if previous applications had been disposed of and a fresh application for execution is put in after this Act came into force, a certificate ought to be produced. 15 B. 265. G

General—(Continued).

(2) Object of section—Certificate evidence of heirship.

This Act was passed principally for the protection of honest debtors. The debtor is entitled before payment to ask that the person demanding payment should satisfy him either that he is the heir of the person who lent the money entitled to receive re-payment, or that he is entitled as having been an owner of the money lent, before the death of the lender. In the former case the succession certificate is the proper evidence. 30 M. 454=17 M.L.J. 367. H

(3) Retrospective operation of Act.

(a) The Act is not retrospective. It does not apply to applications for execution pending at date of its introduction. It applies only to applications for execution put in after its introduction. 14 M. 458; 1 M.L.J. 602. See also 15 B. 79. I

(b) The general rule as stated in *Wright v. Hale* (6 H. and N. 227) and in *Kimbray v. Draper* (3 Q.B. 160) is, that, when an enactment takes away a vested right, it does not apply to existing rights, but when it deals with procedure or regulates practice only it applies to all actions pending as well as future. In C.M.P. 416 of 1889, it was held that the Act did not apply to an application to execute a decree which was pending at the date of the passing of the Act (14 M. 458). In the case before us the plaintiffs had a vested right to a decision in the suit already instituted by them in accordance with the law as it existed when the suit was instituted, and that right would certainly be curtailed if the Act subsequently passed were applied to it. 16 M. 64 (66). J

(4) Construction of section.

This section distinctly and peremptorily forbids any Court from passing a decree against a debtor of a deceased person for payment of his debt, except on production, by the claimant, of probate or letters of administration. A decree would be "against the debtor" when passed, although he consented to it. 15 B. 105. K

(5) Certificate not necessary for commencement of suits.

(a) The production of a Succession Certificate is not a condition precedent to the institution of a suit or the presentation of an application to sue *in forma pauperis*. 16 M. 454. L

(b) It is not an imperative condition precedent to the institution of a suit by the legal representative of a deceased person, for a debt due to his estate, that such legal representative should first obtain a certificate under Act XXVII of 1860. 4 A. 485=2 A.W.N. 122. M

(6) Certificate when necessary.

(a) The production of a certificate of heirship under Act XXVII of 1860 is not a condition precedent to the institution of a suit by a person claiming to be the legal representative of a deceased creditor. 10 B. 107. N

(b) But the Court may require the plaintiff to obtain such a certificate, if it entertains any reasonable doubt as to the person entitled to the payment (Bom. P. J. 1884, p. 218, R) 10 B. 107. O

General—(Concluded).**(7) Certificate not necessary for continuing a suit already instituted.**

A suit commenced by a deceased plaintiff may be continued by his legal representative without a certificate; all that the law requires being that the representation should be complete before decree. 16 B. 519. P

(8) Certificate necessary even for passing a decree on compromise.

A compromise-decree for payment of money is one '*against*' the debtor. Before the passing of such decree, a certificate ought to be produced. 15 B. 105. Q

(9) Section applicable to suits instituted before coming into force of Act.

S. 4 of Act VII of 1889 made no change in the substantive law, but enacted merely a rule of procedure. Inasmuch, therefore, as "no one has a vested right in any particular form of procedure" the above mentioned section is applicable to suits instituted before the coming into force of Act VII of 1889. 16 A. 259. (6 A. 262, F; 3 Ch. D. 69; 4 Ch. D. 752; 6 H. and N. 227, R). But see 29 M. 77; 26 C. 839; 4 C.W.N. 558; 28 B. 630. R

(10) Whether the Act would apply to the case of a person who has been substituted as plaintiff.

As to——— for one who having taken out a certificate has died pending the suit, see 22 C. 143. S

1.—"No Court shall pass a decree against a debtor for the payment of his debt."**(i) MORTGAGE DEBTS.**

CALCUTTA.

(1) Suit for sale of mortgaged property.

(a) The section has no application to a suit for sale on the mortgage. So, the heirs of a mortgagee seeking relief against the mortgaged property alone need not take out a certificate under the Act. 19 C. 336 [Fol., in 26 C. 839=4 C.W.N. 558; 28 B. 630; 22 C. 143; 12 C.W.N. 145; Diss., 16 A. 259=14 A.W.N. 74]. T

(b) The following observations of their Lordships may also be noted:—"S. 4 says: 'No Court shall pass a decree against a debtor for payment of his debt,' and so on. A mortgagee might ask for a decree against the person of the debtor, but the Court is not bound to make a personal decree; it might, if the facts permit, make a decree only against the property mortgaged by the defendant; and, in the circumstances of the present case, it was quite open to the Court of first instance—in fact, it was its duty—to refrain from making a personal decree and to pass a decree charging the property in the hands of the defendants for satisfaction of the claim of the plaintiffs. The relief that the plaintiffs asked for in the suit was not for recovery of the debt, but as observed by Sir Barnes Peacock in the Full Bench decision in B.L.R. Sup. Vol., 879=9 W.R. 170, it was a suit for the recovery of an interest in immoveable property. A suit to enforce a charge against immoveable property is a suit for the recovery of an interest

1.—“No Court shall pass a decree against a debtor for the payment of his debt.”—(Continued).

(i) MORTGAGE DEBTS—(Continued).

CALCUTTA—(Continued).

in immoveable property; and if that be the correct view to take, it seems to be obvious that the plaintiffs were entitled, notwithstanding the absence of a certificate under the Succession Certificate Act, to sustain the decree that had been pronounced in their favour by the Court of first instance, that being a decree charging the immoveable property.” 19 C. 336, followed in 22 C. 143 (150). **U**

(2) Mortgage decree—Suit by assignee of mortgagee for sale.

The assignee of a property mortgaged is not a debtor within the meaning of this section; and a mortgagee praying for the sale of the property, and asking for no relief personally against the mortgagor, is not bound to take out a certificate under that Act before he can obtain a decree. 19 C. 336 (15 C. 54, *F.*; 13 C. 47, *D.*). **Y**

(3) Suit on mortgage bond by heir.

A mortgage bond was executed by the defendant in favour of H, who died, leaving two sons, J and S, the elder of whom, J, took out a certificate to collect the debts of his father, and instituted a suit on the bond in which he asked both for sale of the mortgaged property and for a personal decree against the defendant. Whilst the suit was pending J died, and S was allowed to be substituted in his place as plaintiff. A decree was made for sale of the property, but the personal relief was not granted, as it was held to be barred by lapse of time: *Held*, that this was not “a decree against a debtor for payment of his debt” within the meaning of S. 4 of the Succession Certificate Act (VII of 1889), (15 C. 54; 19 C. 336, *Appr.*); the suit was, therefore, maintainable notwithstanding that no certificate had been taken out by S. *Held* also that it is doubtful whether that Act would apply at all to the case of a person who has been substituted as plaintiff for one who having taken out a certificate has died pending the suit. 22 C. 143. **W**

(4) Application for execution by the original mortgagee—Subsequent proceedings by his heirs—Succession certificate, if necessary.

(a) Where a mortgagee obtained a decree upon his mortgage and after instituting execution proceedings died while the same were pending, and his legal representatives were substituted in his place: *Held* that S. 4 of the Succession Certificate Act did not apply, and the fact that the legal representatives had not obtained a succession certificate did not debar them from proceeding with the execution. 4 C.W.N. 558=26 C. 339 (15 C. 54; 19 C. 336; 22 C. 143, *F.* and 16 A. 259, *D.*). **X**

(b) S. 4, sub-sec. 1, cl. (b) does not apply to a case where the Court had commenced proceedings originally upon the application of the creditor himself, but, during the pendency of the execution proceedings, the creditor dies and his legal representatives are brought on the record. 26 C. 339=4 C.W.N. 559 (22 C. 143, *R.*). **Y**

(5) Personal decree against mortgagor—Necessity for certificate.

(a) Having regard to S. 4 of the Succession Certificate Act, the Court cannot pass any decree under S. 90 of the T. P. Act in favour of the representative of the mortgagee, if no certificate has been granted to him. 35 C. 767. **Z**

1.—“No Court shall pass a decree against a debtor for the payment of his debt.”—(Continued).

(i) MORTGAGE DEBTS—(Continued).

CALCUTTA—(Continued).

- (b) And the grant of a certificate subsequent to the passing of the decree under S. 90 of the T. P. Act, will not validate such a decree. (*Ibid.*) **A**

6) Application by heir of mortgagee for supplementary decree under S. 90 of the T. P. Act.

Where after a preliminary decree had been made in a mortgage suit, the mortgagee died, and his sons got themselves substituted on the record and an order absolute was made in their favour, but the proceeds of the sale proving insufficient, they applied for a personal decree for the balance under S. 90 of the T.P. Act, *held* that, until the applicants obtained a certificate under the Succession Certificate Act, no such decree could be made in their favour. 12 C.W.N. 145=7 C.L.J. 658. **B**

(7) Suit for mortgage-money, security becoming impaired.

- (a) When the representatives of a usufructuary mortgagee sue to recover the mortgage-money from the mortgagor personally by reason of the mortgage-security becoming impaired by subsequent events, no succession certificate need be produced. 28 C. 246; 5 C.W.N. 607. **C**

- (b) A executed a usufructuary mortgage in favour of B, under which B was not entitled to sue for the mortgage-money so long as the property continued in his possession. After B's death, the heirs of B were deprived of a portion of the security at the instance of a third party who successfully claimed a paramount title to that portion of the property. The heirs of B sued to recover the mortgage debt from the mortgagor personally. *Held* that S. 4 of the Succession Certificate Act had no application to the case and the suit was maintainable without a certificate as the heirs of B were not suing to recover a debt due to the deceased mortgagee. 5 C.W.N. 607=28 C. 246. **D**

(8) Right to sue without certificate—Death, during execution proceedings, of the original mortgagee, and substitution of his heir.

- (a) S. 4 of the Succession Certificate Act (VII of 1889) is not a bar to execution proceedings instituted on a mortgage-decree upon the application of the original mortgagee, by reason of the original mortgagee having died during the pendency of the proceedings, and his legal representatives who were substituted in his place not having produced any succession certificate. 26 C. 839 (16 A. 259, *Diss.*). **E**

- (b) Their Lordships observed as follows:—S. 4, sub-sec. 1, cl. (b), can have no application to the present case. For that clause provides that no Court shall “proceed upon the application of a person claiming to be entitled to the effects of a deceased person” to execute against a debtor of such deceased person a decree or order for the payment of his debt. Now, in the present case, the Court was not proceeding upon the application of a person claiming to be entitled to the effects of a deceased person, but was proceeding originally upon the application of the creditor himself, and it was only during the pendency of the execution proceedings that the original

1.—“No Court shall pass a decree against a debtor for the payment of his debt.”—(Continued).

(i) MORTGAGE DEBTS—(Continued).

CALCUTTA—(Concluded).

mortgagee, decree-holder, died, and his legal representatives, the present respondents, were brought on the record. In such a case we do not think that S. 4 of the Succession Certificate Act was any bar to the Court proceeding with the execution.” 26 C. 889 (841). **F**

ALLAHABAD.

(1) Mortgage—Necessity for certificate.

This section applies to suits for sale under S. 88 of the Transfer of Property Act, 1882. 16 A. 259 (F.B.) ; (16 M. 64, *Dist.*; 19 C. 336, *Diss.*). **G**

In the above case their Lordship observed as follows:—“Money lent on security of a mortgage is a debt due from the mortgagor to the mortgagee, although from the terms of the contract it may not be recoverable from the mortgagor personally or except by a decree for sale of the mortgaged property. A mortgagee who brings his suit for sale is bringing his suit against his debtor, the mortgagor, for payment of his debt, and the decree which he seeks in that suit is a decree for payment of his debt by sale of the mortgaged property. A decree for sale under S. 88 of Act IV of 1882 (The Transfer of Property Act, 1882) orders that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage,” or the decree for sale declares “the amount so due at the date of such decree.” The decree for sale also orders that in default of the defendant paying the amount found or declared to be due, “the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, &c.” S. 88 of the Transfer of Property Act appears to us to show that a suit for sale is a suit in which, if the plaintiff succeeds, the decree which the Court passes is one form of a decree for payment of a debt. It may be that the proceeds of the sale may not be sufficient to discharge such debt, and in that case the mortgagee has recourse to S. 90 of the same Act when that section applies. In our opinion S. 4 of Act VII of 1889 applies to suits for sale under S. 88 of the Transfer of Property Act, 1882. A mortgagor needs as much protection as any other debtor when sued for a debt by a person claiming to be entitled to the effects of his deceased creditor. 16 A. 259 (267). **H**

In the above case their Lordships distinguished the decision of the Madras High Court in 16 M. 64 in the following terms:—“The Madras case was for foreclosure of a mortgage, and we think that there can be no doubt that a suit for foreclosure of a mortgage could not in any sense be considered as a suit for a decree for payment of a debt.”

N.B.—The conflict between the Calcutta and Allahabad cases (22 C. 143 and 16 A. 259) was noticed in 7 M.L.J. 100, but was not decided as it was found for some other reason that no certificate was required in that case. Dr. Rashbehari Ghose makes the following observations on this point in his *Law of Mortgage in India* (3rd edition, pp. 84—88):—

1.—“No Court shall pass a decree against a debtor for the payment of his debt”—(Continued).

(i) MORTGAGE DEBTS—(Continued).

ALLAHABAD—(Concluded).

“The distinction made by the learned Judges of the Allahabad High Court between a decree for sale and one for foreclosure rests upon a very doubtful foundation. The learned Judges say: ‘There can be no doubt that a suit for foreclosure of a mortgage could not, in any sense, be considered as a suit for a decree for payment of a debt.’ But the form of a decree for foreclosure under the Transfer of Property Act also contains a direction to the defendant to pay the amount due to the mortgagee, the only difference being that in a foreclosure action, if the debt is not paid, the right of the mortgagor to redeem is extinguished; while in a suit for sale the proceeds are applied in payment of the mortgage-debt. But does this circumstance make any real difference? . . . We must also remember that in an action for foreclosure the Court may in a proper case direct the sale of the mortgaged property, and the application of the Succession Certificate Act should not be made to depend upon the decree which may be ultimately made by the Court in the action. It seems to me, therefore, that the case of 16 M. 64 and 2 M.L.J. 155, cannot be distinguished in principle from the Calcutta case which the learned Judges of the Allahabad High Court refused to follow. The applicability of the Succession Certificate Act should not hinge on the particular form of the security which may be possessed by the creditor, or the mode in which his rights may be worked out by the final decree by the Court. It is said by Chief Justice Edge that a mortgagor is entitled to as much protection as any other debtor, when he is sued by a person who claims to be entitled to the effects of the deceased creditor. The remark may be perfectly true, but the protection to which the mortgagor is entitled should not depend on the form of the mortgage; and for this purpose it would seem to be perfectly indifferent whether the security is in the form of a simple mortgage, a mortgage by conditional sale, or an English mortgage.”

N.B.—For an instructive article on the subject, see 4 M.L.J. (Journal portion), p. 146. I

MADRAS.

(1) Suit to recover money by sale of property mortgaged.

Whether a plaintiff, in a—need produce a certificate under the Succession Certificate Act, see 20 M. 232. J

(2) “Debt,” meaning of—Certificate when necessary and when not.

(a) Irrespective of the actual description of relief granted, a decree for the enforcement of a mortgagee's rights as against the mortgaged property is not a decree for a “debt” within the meaning of the section; and therefore no certificate is necessary with reference to this decree. 29 M. 77 (16 A. 295, *not F.*). K

(b) But it would be otherwise with reference to a personal decree for the debt, and a certificate will be a condition precedent to enforce such a personal decree. (*Ibid.*) L

(3) Suit for foreclosure.

(a) The section does not apply to a suit for foreclosure of a mortgage. 16 M. 64 (66). M

1.—“No Court shall pass a decree against a debtor for the payment of his debt”—(Continued).

(i) MORTGAGE DEBTS—(Continued).

MADRAS—(Concluded).

- (b) Their Lordships observed as follows in the cases cited above :—

“We may also observe that the decree appealed against is for foreclosure of the mortgage and *not* one for the payment of a debt. The suit would be barred if it were regarded as one to recover the debt, and the direction to pay in six months contained in the decree is given not to fix a personal liability for the debt, but to enable the defendants to save their right of redemption and to prevent its extinction by foreclosure.”
16 M. 64 (66). N

(4) Suit by mortgagee for money or possession of mortgaged premises.

When the son of a deceased usufructuary mortgagee sues the mortgagor for the money due under the mortgage or for possession of the mortgage lands until payment of the mortgage, no succession certificate need be produced. In this case the suit was not based on the contract of mortgage. 24 M. 22. O

BOMBAY.

(1) Suit for sale on mortgage.

- (a) S. 4 of the Succession Certificate Act (VII of 1889) limits the necessity of a certificate under the Act to those suits in which the Court is called upon to pass a personal decree against the debtor of a deceased person for payment of his debt; and does not apply to a suit for a sale on a mortgage. 28 B. 680=6 Bom. L.R. 582 (19 C. 336; 22 C. 143; 26 C. 839, *F.*; 16 A. 259, *not F.*; 15 B. 105, *R.*). P

- (b) In the above case, Chandravarkar, J., after pointing out the different views held by the Allahabad and the Bengal High Courts, proceeded as follows :—“There is no decision of this Court (*viz.*, Bombay High Court) directly in point. *Santaji Khanderao v. Ravji* (15 B. 105) was a case where the suit was for a personal decree against the defendant and also for a sale of the mortgaged property, and the only point decided was that a consent decree is a decree against a debtor, within the meaning of S. 4 of the Succession Certificate Act. That decision is, however, useful for the purpose of the point now before us inasmuch as it was held there that the Succession Certificate Act was ‘intended for revenue purposes as well as to facilitate collection of debts.’ Being partly a fiscal Act, it must be construed strictly, and the words in S. 4, *viz.*, ‘a decree against a debtor’ must be interpreted *prima facie* to mean a personal decree.” 28 B. 630 (632). Q

- (c) After making the above observations His Lordship proceeded to examine the grounds of the view taken by the Allahabad High Court in the following terms :—“The reasoning of the Allahabad Full Bench, however, is that ‘money lent on the security of a mortgage is a debt due from the mortgagor to the mortgagee, although from the terms of the contract it may not be recoverable from the mortgagor personally or except by a decree for sale of the mortgaged property. A mortgagee who brings his suit for sale is bringing his suit against his debtor, the mortgagor, for payment of his debt, and the decree which

1.—“No Court shall pass a decree against a debtor for the payment of his debt”—(Continued).

(i) MORTGAGE DEBTS—(Concluded).

BOMBAY—(Concluded).

he seeks in that suit is a decree for payment of his debt by sale of the mortgaged property (see 16 A. at p. 267). Assuming that such a suit is one for the payment of a debt, still the payment has to be made not by the debtor but by sale of the mortgaged property. In other words, it is the property which the suit seeks to, and the decree does, make liable, whereas what S. 4 provides is that ‘no Court shall pass a decree against a debtor for payment of his debt.’ It is true, as pointed out in their judgment by the Allahabad Full Bench, that ‘a decree for sale under S. 88 of Act IV of 1882 (The Transfer of Property Act, 1882), orders that ‘an account be taken of what will be due to the plaintiff for principal and interest on the mortgage,’ or the decree for sale declares ‘the amount so due at the date of such decree.’ The decree for sale also orders that in default of the defendant paying the amount found or declared to be due, ‘the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, etc.’ And the Allahabad Full Bench infer from this language of S. 88 of the Transfer of Property Act that ‘a suit for sale is a suit in which, if the plaintiff succeeds, the decree which the Court passes is one form of a decree for payment of a debt.’ It may be a decree for payment of the debt, but the question is,—Payment by whom? So long as the decree does not direct the defendant to pay the debt, but merely provides that if he does not pay, the mortgaged property shall be sold in satisfaction of the debt, it cannot, we think, without straining the language of S. 4 of the Succession Certificate Act, be said to be a decree against the debtor. Had the legislature intended that the section should apply to a suit for a sale on a mortgage, they would have used apt words to convey that meaning.” 28 B. (632, 633). **R**

- (d) Dealing with the observation of the Allahabad High Court in 16 A. 259 that “the mortgagor needs as much instruction as any other,” His Lordship proceeded as follows :—“It may be that, as the Allahabad Full Bench point out, ‘a mortgagor needs as much protection as any other debtor when sued for a debt by a person claiming to be entitled to the effects of his deceased creditor’; but, on the other hand, as to this question of protection, there is a difference between a mortgagor who has made himself personally liable to pay and also mortgaged his property as security for the debt and one who has made the property alone security therefor. In the former case, he may be sued by one who may not be the legal representative of the creditor and in that case he may have to pay twice over, if the rightful heir sues without being able to recover from the wrong person if the person be insolvent. In the latter, if a wrong person sues and obtains a decree and sells the property, the rightful heir cannot enforce payment from the mortgagor, but must hold the property alone liable and the property remains liable all the same. The mortgagor is no loser and needs no protection.” 28 B. 634, 635. **S**

1.—“No Court shall pass a decree against a debtor for the payment of his debt”—(Continued).

(ii) SUIT FOR VALUE OF MOVEABLES.

Suit for value of moveables.

- (a) A suit for value of moveables belonging to deceased, is not one for a “debt,” and no succession certificate is necessary for maintenance of such suit. 18 M. 457 ; 5 M.L.J. 16. **T**
- (b) X, a Hindu, left some sheep with Y, who failed to return them. X having died, his widow applied for a succession certificate to enable her to sue Y for damages for wrongful detention of the sheep : *Held*, that no debt was owing by Y to X within the meaning of Succession Certificate Act, S. 4, sub-sec. (2). 18 M. 457. **U**

(iii) SUIT FOR REFUND OF PRICE.

Suit for refund of price paid for goods sold but not delivered.

- (a) A suit for the refund of the price, alleged to have been paid for goods sold but not delivered, is a suit for the recovery of a debt within the meaning of Act VII of 1889, and the heir of the vendee suing for such refund must produce a succession certificate. 2 M.L.J. 34. **Y**
- (b) The following observations of Subramania Iyer, J., are worthy of note :—
The claim here however is for the refund of the price alleged to have been paid for goods sold but not delivered. To determine the amount of damages in these cases, it is no doubt necessary to know what the contract price was, but the payment of the price has nothing to do with the matter, as the vendee would be entitled to recover damages from the vendor who has broken the contract, whether the price agreed has been paid by the vendee to the vendor or not. When property is sold and the vendor cannot perform his part of the contract, the ground on which the vendee is held entitled to recover the price paid is, that there has been a total failure of consideration (*Want v. Stallibras*, L.R. 8 Ex., 175 at p. 183 ; and *Hanuman Kamut v. Hanuman Mandur*, L.R. 18 I.A. 158). The payment of the price in such a case is decreed clearly by way of restitution, and not by way of compensation for the breach of contract. [See S. 65 of the Indian Contract Act, illus. (d)]. I cannot, therefore, accept the view that this is a claim for damages as alleged. To constitute such a sum in the hands of a person a debt, it is sufficient that in some way or other he can be compelled to pay it. (*Per Coleridge, C.J.* in *Booth v. Trail*, 12 Q.B.D. 8 at p. 10 ; see, also, the observation of Lindley, L.J. in *Webb v. Stenton*, 11 Q.N.D. 518 at p. 526). 2 M.L.J. 34 (35, 36). **W**

(iv) SUIT FOR ACCOUNTS.

Suit for account—Not one for recovery of debt.

- (a) A suit for an account is not a suit for the recovery of a debt within the meaning of S. 4 (1) (a) of the Act. 32 C. 418. (22 M. 139, R.). **X**
- (b) So, where the plaintiff as heir of a deceased person sued the defendant, who was the latter's agent, for an account, it was *held* that he was entitled to judgment against the defendant for an account without producing a succession certificate. (*Ibid.*) **Y**

1.—“No Court shall pass a decree against a debtor for the payment of his debt”—(Continued).

(v) SUIT FOR DAMAGES.

(1) Damages for money had and received.

(a) A suit for—— by the defendant for plaintiff's use is not one for a “debt,” within the meaning of the section. 15 B. 580. Z

(b) In this case, T and others, who were entitled to recover from the Government treasury a certain sum on account of *deshmukhi hak*, sold it to B in 1873 in consideration of a debt due to him. B died in the year 1884. In the year 1886, T and his co-vendors themselves recovered from the Government the said sum, which, under the sale-deed, was recoverable by B. In a suit brought by the heirs of B to recover the amount from T and the other executants of the sale-deed :

Held, that a certificate under Act VII of 1889 was not required to enable the plaintiffs to sue. By the sale in 1873 the property in the amount of the *hak* sold had become vested in the deceased before his death, but the defendants never became his debtors at any time, as the amount so assigned was not received by them from the revenue authorities till after his death in 1884. For wrongfully receiving it in 1886, the defendants could either be sued in damages by the persons entitled to receive the *hak*, or treated as their debtors and sued for money had and received to their use. 15 B. 580. A

(2) Unliquidated claim.

(a) An——, as in a suit for accounts of a partnership, is not a “debt.” 22 M. 139. But see Judgment of BENSON, J., at p. 142. B

(b) A Muhammadan, being the son of a deceased member of a firm, brought a suit as his legal representative, against the surviving partners praying for an account of the partnership assets and for payment to him of the amount which might be found due to the share of the deceased. The plaintiff had neither letters of administration nor a succession certificate: *Held*, that the plaintiff's claim, being unliquidated, was not a debt within the meaning of Succession Certificate Act, 1889, S. 4 (1) (a). 22 M. 139. C

(vi) SUIT FOR RENT.

Rent, not debt.

(a) Rent is not a debt. 26 C. 536=3 C.W.N. 294. D

(b) Where an arrear of rent fell due during the lifetime of A, whose name was registered under the Land Registration Act, a suit for rent by B, his son, for the rent due to his father, is maintainable although B's name is not registered. The “debt” in this case being rent, no succession certificate was necessary to entitle the plaintiff to obtain a decree. 3 C.W.N. 294=26 C. 536. E

(vii) SUIT FOR DEFERRED DOWER.

Dower of Muhammadan wife, if a debt.

The dower of a Muhammadan wife, whether prompt or deferred, is a “debt,” within the meaning of this section, and in a suit for its recovery brought by the heirs of the deceased's wife against the husband, no decree can be passed in favour of the plaintiff in the absence of the certificate required by the Act. 30 A. 315=A.W.N. (1908), 113 (2 C.W. N. 591, Diss.). See, also, 8 A.L.J. 79. F

1.—“No Court shall pass a decree against a debtor for the payment of his debt”—(Continued).

(viii) DEBT ACCRUING DUE SINCE DECEASED'S DEATH.

Debt accruing due since deceased's death—Certificate necessary.

- (a) A debt is a sum of money which is now payable or will become payable in future by reason of a present obligation. 36 C. 936=13 C.W.N. 966=10 C.L.J. 180=3 Ind. Cas. 492 (F.B.) (*Overruling*, 2 C.W.N. 591). **G**
- (b) Therefore, in the case of a debt existing in the life of a creditor, but which did not become payable until after the death of the creditor, the heirs of the creditor cannot obtain a decree without the production of a certificate under the Succession Certificate Act, as the word “debt” in S. 4 of the Act is applicable to a sum of money which has been promised at a future day. (*Ibid.*) **H**

(ix) FILING AWARDS.

Certificate not necessary for filing awards.

R and N were undivided brothers; N was the elder, but was the manager of the family property. N died leaving a widow and three sons, and after his death R sued the defendant to recover certain debts due to the family. The parties referred the dispute to three arbitrators appointed by them without the intervention of the Court and applied to the Court to have the arbitrator's award filed. A question having arisen whether the award could be filed without a succession certificate under Act VII of 1889: *Held* that there was nothing in Act VII of 1889 to prevent the award being filed without a certificate. 16 B. 241. **I and J**

(x) APPLICATION FOR LEAVE TO [SUE IN *FORMA PAUPERIS*].

Civil Procedure Code, 1882, S. 622—Order wrongly dismissing application to sue in *forma pauperis* open to revision by High Court.

Where a Court, having jurisdiction to entertain an application presented to it for leave to sue *in forma pauperis*, declines to do so by reason of its erroneously supposing that a succession certificate, under Act VII of 1889, was necessary before it could be entertained, the case would come within the principle enunciated in 11 M. 220 (F.B.) as warranting the interference of the High Court under S. 622 of the Code of Civil Procedure. 16 M. 454. **K**

(xi) APPLICATION FOR REVIVAL OF SUIT.

Succession—Survivorship—Mitakshara Law.

On the death of the plaintiff, his sons, who were members of a joint Hindu family, governed by the *Mitakshara* School of Law, of which their father, the deceased plaintiff, was managing member, applied for the revival of the suit. *Held*, that it was not necessary that either letters of administration, or a certificate under Act VII of 1889, should be obtained in order to entitle the applicants to ask that they may be permitted to proceed with the suit. 23 C. 912. **L**

1.—“No Court shall pass a decree against a debtor for the payment of his debt ”—(Concluded).

(xii) COLLECTION OF PART OF A DEBT.

Certificate cannot be given for collection of part only of a debt—Reasons.

- (a) The plain meaning of the phrase “his debt” in S. 4 of the Act is the whole of the debt due by the debtor to the deceased, and not a portion of that debt. 8 A.L.J. 79 (F.B.). M
- (b) Such a meaning of the term is (i) against the canons of interpretation, for the natural meaning of the term “debt” is not a share of some one in that debt; (ii) is opposed to the scheme of the Act which has been enacted to afford protection to debtors, and has nothing to do with the convenience of the applicant or his right to or share in the debt; (iii) will cause the splitting of an indivisible liability; and (iv) will lead to the harassing of a debtor more than once on one cause of action and to multiplication of suits thereon. (*Ibid.*) N
- (c) Hence, no succession certificate can be granted for the collection of a part only of a debt. (*Ibid.*) O
- (d) The only plea which favours the grant of a succession certificate for the collection of a portion of a debt is based on sympathy with the applicant. It may be urged that it will be a great hardship to make an applicant, who is entitled to a fractional share of a debt only to pay duty upon the whole of that debt. This, however, is a matter of pure sentiment and, in the absence of an express rule of law to that effect, Courts of justice can take no notice of the hardships and the more so when there are considerations which point the other way. (*Ibid.*) P
- (e) Nor does Art. 12 of Sch. I of the Court Fees Act in any way support the view that a succession certificate for a portion of a debt can be granted. The *ascertainment* of the amount of the debt mentioned in this article is the *ascertainment* of the amount of the whole debt and not of the share of the applicant therein. It is the *ascertainment* which an accountant would make. Juristic facts which may affect the debt or any portion of it, such as the absence of right to the debt in the applicant, fraud, limitation, the absence of cause of action or the like, cannot be taken into account in ascertaining its amount for the purpose of obtaining a succession certificate. The determination of such facts is the exclusive function of a Court of Justice in a regular suit and may often involve intricate and difficult questions of law and facts which are not to be decided in a summary proceeding. (*Ibid.*) Q

2.—“Person claiming to be entitled to the effects of the deceased person etc.”

A.—WHO ARE PERSONS CLAIMING TO BE SO ENTITLED.

(1) Purchaser at Court auction of a debt due to his deceased judgment-debtor.

A purchaser at Court-auction of a debt due to his deceased judgment-debtor is a person claiming to be entitled to the latter's effects, and is entitled to take out a certificate. 18 B. 815. R

2.—“Person claiming to be entitled to the effects of the deceased person etc.”—(Continued).

A.—WHO ARE PERSONS CLAIMING TO BE SO ENTITLED—(Concluded).

(2) Heir of deceased partner suing for recovery of partnership debt.

If the heir of a deceased partner sues for recovery of a partnership-debt in conjunction with a surviving partner, the heir of the deceased partner ought to produce a certificate, unless it appears on the face of the document itself that the debt was a partnership-debt. 17 M. 108. S

(3) Sons of deceased partners.

In the case of a promissory note given to a firm of two undivided Hindu brothers, both deceased, no suit could be maintained thereon by their sons except on the production of letters of administration or succession certificate. 17 M. 147.

N.B.—See 18 C. 86, where the applicability of S. 45 of the Contract Act and of the Succession Certificate Act to the case of a family partner under the Mitakshara was doubted.

Compare, also, 22 C. 143; 16 A. 259; 22 M. 380; 7 M.L.J. 100; 1 M.L.J. 679; 2 M.L.J. 155; 20 M. 378; 7 M.L.J. 195. T

(4) Successor to impartible zamindari—Debts due to predecessor, Certificate necessary for collection of.

The successor to an impartible estate is not a co-owner with his predecessor in the money due to the latter before his death; but he derives his title to such debts only at the death of his predecessor as part of such predecessor's effects. He cannot therefore recover them without obtaining a certificate under this Act. 30 M. 454=17 M.L.J. 367. But see, also, 7 Ind. Cas. 806. U

(5) Suit by assignee of a debt from the heir of the deceased.

The assignee of a debt from the heir of the deceased cannot get a decree except on the production of a certificate. 15 M. 419; 2 M.L.J. 117.Y

B.—WHO ARE NOT PERSONS CLAIMING TO BE SO ENTITLED.

(1) Surviving partner.

A surviving partner suing alone for recovery of a partnership debt is not “a person claiming to be entitled to the effects of the deceased,” and need not produce a succession certificate. 20 A. 365; 17 M. 108; 9 A. 486; 17 B. 6. W

(2) Claim by right of survivorship needs no certificate.

(a) A succession certificate is confined to the case in which the claim is to the effects of the deceased, and not to family property when the claim is by right of survivorship. 7 Ind. Cas. 806. But see, also, 30 M. 454=17 M.L.J. 367. X

(b) Succession to impartible estates having always been determined by the rule of survivorship; a successor to an impartible *Raj* does not succeed as an heir to the effects of the deceased holder of the *Raj*, but succeeds by right of survivorship. And consequently, when a bond stands in the name of the last owner of the *Raj*, his successor is not bound to produce a succession certificate before he can obtain a decree on the bond. (*Ibid.*) Y

2.—“Persons claiming to be entitled to the effects of the deceased person etc.”—(Continued).

B.—WHO ARE NOT PERSONS CLAIMING TO BE SO ENTITLED—(Contd.).

(3) Receiver appointed to take possession—Not bound to take out certificate.

(a) A receiver by his appointment does not become the representative of the parties, but is an officer of the Court. 6 Ind. Cas. 416=12 C.L.J. 252. Z

(b) Therefore, where, in a suit for partition amongst the sons of a deceased person, one of the sons is appointed receiver, and he seeks to take possession of the Government promissory notes and the cash in deposit in a Bank belonging to the estate of the deceased, he cannot be said to “claim to be entitled to the effects of the deceased person” within the meaning of S. 4 of the Act, and is competent to take possession of the securities and monies in the hands of the Bank without a certificate under the said section. (*Ibid*). A

(4) Curator.

A curator appointed under Act XIX of 1841 (the Curator’s Act) is not a person claiming to be entitled to the effects of a deceased person. He need not take out a certificate under the Act. 20 B. 437. B

Their Lordships observed in the above case as follows :—“We are of opinion that a curator appointed under XIX of 1841 is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage within the meaning of S. 4 of Act VII of 1889, and that he is not required to take out a certificate under it before he can obtain a decree. He is not a representative of the deceased person, but is merely entrusted by the Court with certain powers over the estate for a temporary purpose, amongst which is the power to sue in his own name given him by Sec. 9 of Act XIX of 1841. We are confirmed in this opinion, by the provisions of Sec. 23 of the Succession Certificate Act, for which there would have been no necessity had the provisions of Sec. 4 applied to the curator, since it contemplates his exercising his authority until a certificate under the Act has been granted.” 20 B. 437. C

(5) Co-parcenary property.

No succession certificate is necessary for family debt by right of survivorship. If it is admitted or proved that the family is joint, the presumption is that the debt is a family debt. It is not necessary that it should appear on the face of the bond that it is a joint family debt. 19 B. 338; 16 B. 349; 17 A. 578; 23 C. 912; 1 C.W.N. 32; 22 M. 380; 20 M. 232, 1 Bom. L. R. 197. D

(6) Suit by son for debt due to his father.

In a suit by a son on a bond executed in favour of his deceased father, the defendant is entitled to insist on the production of a certificate under the Act unless it appears on the face of the bond that the debt claimed was due to the joint family consisting of the father and the son. 14 M. 377. [Followed in 20 M. 232 at p. 234; 17 M. 108 at p. 117. Referred to in 19 B 338 at p. 339; 17 A, 578 at p. 580; 9 C. P.L.R. 65 at p. 66; 12 C. W. N. 145 at p 150; 17 M. 147 at p.149.] E

2.—“Persons claiming to be entitled to the effects of the deceased person etc.”—(Continued).

B.—WHO ARE NOT PERSONS CLAIMING TO BE SO ENTITLED—(Contd.).

(7) Debt-bond in favour of one member of joint Hindu family—Debt due to family—Necessity for certificate.

This was a suit by the sons on a mortgage-bond in favour of their father. On the face of the bond the debt did not appear to be a joint family debt. *Held* that, inasmuch as the debt was found to be a joint debt, a succession certificate was not necessary. 20 M. 232=7 M.L.J. 100. F

(8) Mortgage in favour of managing member of joint Hindu family—Suit on mortgage by person claiming by right of survivorship—Necessity for succession certificate.

(a) Suit to recover the amount due under a mortgage-bond executed in favour of the managing member of the family to which the plaintiff belonged. In a family partition, the mortgage-bond fell to the share of the plaintiff. *Held*, seeing that the family was admittedly undivided and that the plaintiff claimed by survivorship, the Succession Certificate Act did not apply, and no certificate was necessary. 22 M. 380. F-1

(b) 14 M. 377 decided that, in order to dispense with a certificate, it must appear on the face of the bond that it was a debt due to the joint family. 20 M. 232 decided that it is enough if it can be *proved* to be a family debt. G

(9) Trustees.

A trustee of a religious endowment succeeding another trustee need not take out a certificate to enable him to sue for a debt due to the institution. 20 M. 162, 24 I.A. 73, 1 C.W.N. 497 (P.C.); nor to enable him to apply for execution. 20 C. 103. H

(10) Debt due to endowment—Pro-note in favour of former manager—Suit by successor.

Where a pro-note was executed to the former manager and founder for a debt due to an endowment, and the manager was succeeded by his son, who, in his turn, was succeeded by the manager's widow who continued the management of the endowment even after her adopted son got into possession of the rest of her husband's estate, it was *held*, in a suit by her on the pro-note, that she was entitled to sue as manager, and that she could get a decree without producing an heirship certificate. She did not sue as being entitled to the effects of her deceased husband, or for a debt due to her deceased husband, but as manager. 20 M. 162 (P.C.)=24 I.A. 73=1 C.W.N. 497. I

(11) Decree made in favour of a deceased *mohunt*—Right of successor and representative to apply for execution of decree made in favour of the deceased for costs incurred on behalf of the *muth*.

The successor and representative of a deceased *mohunt* need not take out probate, certificate or letters of administration to enable him to apply for execution of a decree made in favour of a deceased *mohunt* for costs incurred in proceedings carried on by him on behalf of the *muth*. 20 C. 103. J

(12) Debts of endowment.

(i) A District Judge was held to have rightly refused a certificate under Act XXVII of 1860 for the collection of the debts of an endowment. 21 W.R. 340. K

2.—“Persons claiming to be entitled to the effects of the deceased person etc.”—(Concluded).

B.—WHO ARE NOT PERSONS CLAIMING TO BE SO ENTITLED—(Concl'd.).

- (2) Their Lordships in the above case observed as follows:—“We think that the Judge's view of Act XXVII of 1860 is a correct one. That Act was passed for the greater security of persons paying to the representatives of deceased Hindus, Mahomedans and others, not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons. Then again, in S. 4 of the same Act, it is enacted that the certificate of the District Court shall be conclusive of the representative's title against all debtors of the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favour the certificate has been granted. Now it is not for a moment contended that these debts were due to the *mohunts* personally; they are due to the endowment, and are not debts of a deceased person at all; and the petitioner, as directed by the Judge, is entitled to collect these debts, provided he has been duly appointed *mohunt* of the endowment, but he is not entitled to a certificate under the provisions of Act XXVII of 1860.” 21 W.R. 340. L

3.—“To execute against such a debtor.”

(1) Application of S. 4—Decrees passed prior to, but execution of decree after the passing of the Act—Pending proceeding.

- (a) Section 4, sub-sec. 1, cl. (b) is not confined to the execution of decree passed subsequently to the coming into operation of the Act. 15 B. 265. M
- (b) The heir of a judgment-creditor applying for execution of a decree after Act VII of 1889 came into operation, was bound to obtain a certificate of heirship under this Act. 15 B. 265. N
- (c) The fact that he had already on two occasions presented a *dharkhast* which had been disposed of before the Act came into force did not affect the question. 15 B. 265. See also 15 B. 79. O

(2) Certificate may be produced in the course of execution proceedings.

- (a) A certificate is not a condition precedent to the entertainment of an application for execution. It may be produced during the course of the proceedings. 20 C. 755; 19 C. 482 (13 C. 47); 16 A. 26; 18 A. 34; 20 B. 76 (78). Cf. 6 B. 31. P
- (b) S. 4, sub-sec. 1, cl. (b) of Act VII of 1889 provides that the Court shall not proceed to execution except upon the production of one or other of the certificates set forth in that section. But the application for execution need not at its presentation be accompanied by such a certificate, and, therefore, such an application, though presented unaccompanied by the certificate, will constitute a good application “in accordance with law” for the purposes of Art. 179 of the Limitation Act, 1877. 16 A. 26 = A.W.N. (1893) 197. Q
- (c) An application for execution without the production of the necessary certificate under the Succession Certificate Act is nevertheless one made “in accordance with law” within the meaning of Art. 179, cl. 4 of the Limitation Act. 20 B. 76. R

3.—“To execute against such a debtor”—(Continued).

(d) In cases in which a succession certificate may be required, it is not necessary that such certificate should be produced along with the application for execution; it is sufficient if it be produced and tendered in Court at any time before the Court proceeds to pass an order for the execution of the decree. 18 A. 34. S

(e) When an application for execution has been presented by the legal representative of a deceased decree-holder without the production of the succession certificate, the application is regarded as one “in accordance with law,” because on the subsequent production of the certificate, it would be competent to the Court to grant the relief sought. 13 C.W.N. 533; 9 C.L.J. 443. T

(3) Court not to dismiss execution application for want of certificate, but must give time.

The Court ought not to dismiss an application for execution for non-production of a succession certificate. It must give the applicant an opportunity to produce one. 24 A. 138 (142). U

(4) Execution of decree by heir—Certificate to collect debts.

(a) A certificate under Act XXVII of 1860 to collect debts due to a deceased person, is not indispensably necessary to enable an heir to apply, under S. 208 of the C.P.C., (1859), for the execution of a decree held by the deceased. A person, who has not obtained a certificate, may apply under that section. It will, of course, be open to the Court, in the exercise of the discretion vested in it, if there is any doubt that the person applying for execution is entitled by inheritance to the rights decreed, to refuse the application until a certificate has been obtained. 1 A. 686. Y

(b) S. 4 of Act VII of 1889 merely provides that the Court shall not proceed upon an application of a person claiming to be entitled to execute a decree, except on the production of a certificate or other authority of the like nature. But it does not follow from that section that an application might not be made without the production of the certificate, the certificate being supplied during the pendency of the proceedings. 19 C. 482. (13 C. 47 F.). W

(5) Certificate for collection of debts, whether absolutely necessary for representative to execute—Act XXVII of 1860—Objections to title.

(a) The possession of a certificate under Act XXVII of 1860 is not an imperative condition precedent to the institution of execution proceedings by the representatives of a deceased decree-holder. In such cases, the Court should consider whether the objections to execution are vexatiously raised, or are *bona fide* objections on the part of the judgment-debtor to the title of the person seeking to execute the decree. 5 A. 212=2 A.W.N. 191. X

(b) The words of cl. (b) of S. 4 of Act VII of 1889 prohibit an execution Court from proceeding to execute the decree unless in cases where a succession certificate under the Act is required, such a certificate has been produced. This means that only upon the production of such certificate, is it competent to the Court to direct that execution should issue and proceed on the decree. It is not, however, necessary that

3.—“To execute against such a debtor”—(Continued).

the certificate should be produced along with the application for execution; it is sufficient if it be produced and tendered in Court at any time before the Court proceeds to pass any order for the execution of the decree. 18 A 34=15 A.W.N. 148. Y

(6) Execution of decree obtained by a member of joint Hindu family.

If an undivided Hindu brother obtained a decree for money and died, the surviving brother may, if it were a joint family debt, execute the decree without producing a certificate; but, if it were the separate property of the deceased, the surviving brother is heir of the deceased and must produce a certificate. 16 B. 349. Z

(7) Application for execution by heir without obtaining certificate is step-in-aid of execution.

An application for execution put in by the heirs of a deceased decree-holder is a good and legal one under art. 179 of the Limitation Act 1877, so as to keep the decree alive, even though the applicants have not obtained a succession certificate. 20 C. 755 (757); 20 B. 76 (78). A

(8) Joint decree-holders—Execution of decree by survivor—Execution by heir.

(a) S. 4 cl. (1) (b) applies to the case of a person who seeks to carry on an execution proceeding instituted by a creditor. 10 O.C. 378 (26 C. 839 Diss.; 16 A 259 R). B

(b) Two decree-holders were awarded certain sums under a decree jointly and certain other sums severally. One of the decree-holders died, and the other claimed to execute the whole decree because she was the survivor of the joint decree-holders and because she was the heir of the other decree-holder, and that she could do so without producing a succession certificate. Held that so far as the sums awarded jointly were concerned the surviving decree-holder could execute the decree but she could not be allowed to execute it with respect to the sums awarded severally without the production of a succession certificate. (Ibid). C

(9) Whether section applies to proceedings in execution pending at the time at which the Act came into force.

According to the ordinary rule of construction, statutes are *prima facie* deemed to be prospective only (5 Moore's I.A. 169). When the law is altered while a suit is pending, the law as it existed when the action was commenced must decide the rights of the parties, unless the Legislature by the language used shows a clear intention to vary the mutual relations of such parties (See 3 Bom. H.C. Rep. O.C.J., 45; 3 Bom. H.C. Rep., O.C.J., p. 49; 1 Hay, 369.) In the present case the words of the clause are sufficient in themselves to show that they were not intended to apply to applications or proceedings made before, and pending at, the time at which the Act came into force. The application therein mentioned must mean one made after the Act is in force, and the proceeding of the Court in execution must be an initial one under that application, and not one in continuation of proceedings taken on applications made before the Act came into force. 15 B. 79 (81). D

3.—“To execute against such a debtor”—(Concluded).

(10) Court executing decree cannot question validity of decree.

Where a Court refused execution of a decree on the ground that it should not have been passed since the plaintiff had not obtained succession certificate before passing of the decree, *held* that as the Court executing the decree is not competent to question the validity of a decree passed by a Court of competent jurisdiction, the execution Court had acted with material irregularity in refusing execution of the decree. 145 P.L.R. (06). E

(11) Application for execution pending at date of passing of the Act.

S. 4, cl. (b), Act VII of 1889, does not apply to applications to execute decrees which were pending at the date of the passing of the Act, but refers to applications made after the Act came into force. *Rama Rao v. Chellayamma*, 14 M. 458=1 M.L.J. 602. F

4.—“Sections 36 and 37 of the Administrator-General's Act, 1874.”

(1) In what case Administrator-General may grant certificate—No certificate where probate or administration granted or for money in Government Savings Bank.

“Whenever any person.....shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left assets (whether moveable or immoveable or both) within any of the said Presidencies, and the Administrator-General of such Presidency is satisfied that such assets do not exceed in the whole one thousand rupees in value, he may, after the lapse of one month from the death, if he thinks fit, or before the lapse of the said month, if he is requested so to do, by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person, claiming otherwise than as a creditor to be entitled to a share of such assets, certificates under his hand entitling the claimant to receive the property therein mentioned, belonging to the estate of the deceased, to a value not exceeding in the whole one thousand rupees.

Provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government Savings Bank.” See Administrator General's Act II of 1874, S. 36. G

(2) Grant of certificate to creditors.

“If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased, obtains, within three months, a certificate from the Administrator-General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a Native Christian, Hindu, Muhammadan, Parsi or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, the Administrator-General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him;

4.—“Sections 36 and 37 of the Administrator-General's Act, 1874”—(Concl'd.)

and if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased;

and such certificate shall have the same effect as a certificate granted under the provisions of the same section and shall be subject to all the provisions of this Act which are applicable to such certificate;

Provided that the Administrator General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased. See Administrator-General's Act II of 1874, S. 37. H

5.—“Certificate granted under this Act.”

The certificate to be one obtained in British India.

(a) A suit in British India cannot be decreed on the production of a Probate obtained in a Native Court. To entitle a plaintiff to a decree, he must obtain a Probate or Succession Certificate in British India. See A.W.N. 1885, 3; 17 M. 14. I

(b) If the deceased ordinarily resided in a native state and had property in British India, the proper procedure is for the District Court within whose jurisdiction the property of the deceased was situate, to grant the certificate under the Act. 17 M. 14; A.W.N., 1885, 3. J

6.—“Having the debt specified therein.”

(1) Scope and object of this provision.

“The principal feature of the Act is that it limits the power of the certificate-holder as regards the collection of debts and securities of a deceased person to those debts and securities which are specified in the certificate. The fiscal reasons for this limitation are obvious; it is equally obvious that, for the protection of the debtor, the certificate should clearly show that the person seeking to recover the debt had satisfied a competent Court of his title to do so. It is not to be expected that the certificate should apply to all debts and securities belonging to the estate, or that the applicant should include in his certificate debts which he might expect to collect amicably without one; the value of the certificate will be where debts are contested, and it would not be fair to the defendant to put him to the expense and trouble of disputing the representative character of the claimant as well as the liability to the debt. Moreover, the insertion of the debt in the certificate may be expected to operate as a check upon false claims, for a man would scarcely pay duty on the amount of a debt which he did not consider himself legally entitled to recover.

“Section 4 of the Bill accordingly provides that no Court shall (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, unless the person so claiming has established, by some method recognised by the law, his title to represent the estate of the deceased in regard to the claim.

6.—“ *Having the debt specified therein* ”—(Concluded).

“ In laying down this rule the legislature followed the general tenor of the decisions of the High Courts which had established that a plaintiff was bound to prove his representative title before he can obtain a decree or execute a decree already obtained by the deceased person through whom he claimed, though he might institute his suit or apply for execution without such proof provided he completed his title before decree or before execution issues. See Gazette of India, 16th March 1889, Part VI, pp. 48-54. K

(2) **Certificate may be granted to collect any one or more debts.**

- (a) Certificate may be granted in respect of any one or more of the debts due to the deceased, but not for part of a debt, unless the remaining portion has been discharged. 19 A. 129; 18 A. 45. L
- (b) The Court is not restricted to grant a certificate for the collection of *all* the debts. 18 A. 45. M

7.—“ *Debt* ”—*includes any debt except rent etc.* ”

(1) **Rent, not debt.**

Rent is not a debt under this section. See 26 C. 536 = 3 C.W.N. 294. N

(2) **When bond has been obtained for arrears of rent, certificate necessary.**

When the deceased had obtained a bond for arrears of rent and the representative brings a suit on it, he must produce a certificate, the bond-debt being no longer “rent.” 1 M.L.J. 680. O

(3) **No certificate necessary for rents accruing due since death of deceased.**

No certificate is necessary in respect of rents accruing due since the death of the deceased; the rent not being assets of the deceased's estate in such a case. 18 B. 394. P

Practice under the Section.

(1) **Objection as to want of certificate in appeal.**

An objection regarding want of a succession certificate ought not to be allowed to be taken for the first time in appeal. 28 C. 246. Q

(2) **Court not to dismiss suit for want of certificate, but must give time to plaintiff.**

A suit ought not to be dismissed for non-production of a certificate. The Court ought to give the plaintiff time to complete his title. 17 M. 14.R

(3) **Appeal to Privy Council—Substantial question of law—Non-production of succession certificate before lower Court.**

- (a) The High Court affirmed a decision of the Court below which granted execution of a decree to a representative of the decree-holder without the production of a succession certificate, under S. 4 of the Act upon its being shown to the High Court that such succession certificate had been obtained by the decree-holder before the order appealed from had been passed, and upon the certificate being produced in the High Court before the appeal was determined. The judgment-debtor applied for leave to appeal to Her Majesty in Council against this order.

Held, that the objection, that an application for execution was improperly granted by reason of the non-production of the succession certificate before the lower Court, does not raise a “substantial question of law”

Practice under the Section—(Concluded).

within the meaning of S. 596, C.P.C., 1882, so as to admit of an appeal to the Privy Council. 20 A. 118=17 A.W.N. 220. **S**

- (b) In the course of the judgment Knox and Bannerji, JJ., observe:—"What-ever irregularity there was in the Court below was not an irregularity affecting the merits or jurisdiction of the Court to entertain the application for execution. It was cured by the production in the Court of the certificate which had already been obtained. No objection could have been taken if this Court, in dealing with the appeal had set aside the order appealed from and directed the Court below to cause the production of the succession certificate and proceed to execution after the said production. Such a course would have been harassing, and needlessly harassing, both to the judgment-debtor and the judgment-creditor, and would have been a pure sacrifice to the observance of technicalities in proceedings. We hold that no substantial question is involved." 20 A. 118=17 A.W.N. 220. **T**

Miscellaneous.**(1) Lordlord and tenant—Suit for rent,**

A certain firm mortgaged with possession its immoveable property to two other firms trading jointly, who let out the property to the mortgagor firms. Afterwards some of the partners of the mortgagee firms having died, the surviving partners and the sons of the deceased brought a suit against the mortgagor firm to recover rent which accrued due after the deaths of the deceased partners. The Judge *held* that the plaintiffs could not proceed with the suit without a certificate under the Succession Certificate Act. *Held*, reversing the order, that as the rent sued upon became due after the deaths of the deceased partners, it formed no part of their estates at the time of their respective deaths, and no certificate was, therefore, necessary under the Succession Certificate Act. 18 B. 394. **U**

(2) Act XXVII, 1860, S. 2, "doubt as to the party entitled."

The "doubt as to the party entitled" contemplated in the corresponding section of the older Act of 1860, is not a speculative or possible doubt, but a reasonable doubt so far as the facts are ascertainable, after due inquiry, from faith-worthy persons, either connections of the deceased or from others. 7 M. 115. **Y**

N.B.—This ruling is of no importance in view of the alterations introduced in the present section.

(3) Act XXVII, 1860, S. 2—Exception.

The exception in S. 2, of the older Act of 1860, is not satisfied by the mere absence of "a reasonable doubt as to the party entitled;" but, there must also, be present, fraudulent or vexatious motives in withholding payment. 7 M. 115. **W**

N.B.—This ruling also is not important under the present section.

(4) The principle of *res judicata* has no effect on the provisions of this section.

The principle of *res judicata* has no effect upon the provisions of S. 4 of Act VII of 1889. It imposes a duty on the Court which the Court is bound to perform, no matter what the proceedings between the parties or

Miscellaneous—(Concluded).

any agreement between the parties may be. But the Court, instead of dismissing an application for execution, should give reasonable time to the applicants to perfect their title by the production of one or other of the documents specified in S. 4 of the Act. 24 A. 138=17 A.W.N. 29. **X**

5. The District Court within the jurisdiction of which the deceased Court having jurisdiction to grant certificate¹. ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

(Notes).**1.—“ Court having jurisdiction to grant certificate.”**

- (1) **Certificate under Act XXVII of 1860—Jurisdiction to grant certificate of administration—Foreigners residing abroad.**

(a) Under S. 3 of Act XXVII of 1860 a certificate can be granted only for the estate of a British subject either resident within the district where the certificate is sought, or else having no fixed place of residence. 12 B. 150. **X-1**

(b) The Act does not make provision for administration of the effects of a foreigner domiciled abroad. (*Ibid.*) **Y**

- (2) **Probate issued from Native Court in Cutch—Certificate of Political Agent—Suit in British India.**

A suit in British India by the executors of the Will of a native of Cutch was dismissed, on its appearing that the plaintiffs were furnished only with probate issued from a native Court, of which they produced a copy certified by the Political Agent of Cutch, and since stamped in accordance with the Court Fees Act, 1870. *Held*, that the plaintiffs were not entitled to a decree without taking out probate or letters of administration in British India under Act V of 1881 or a certificate under Act VII of 1889, but instead of dismissing the suit, the Court should have allowed time for the plaintiffs to have so completed their title to sue. 17 M. 14. **Z**

- (3) **Where a person had no fixed place of residence at the time of his death.**

Where a person had no fixed place of residence at the time of his death, the Judge of the district in which his debts are, has authority to grant a certificate under Act XXVII of 1860. 20 W.R. 286. **A**

- (4) **Certificate not to be questioned by any Court in subsequent proceedings based thereon.**

Where a succession certificate has been granted by a Court empowered under the Act to grant such certificates, it is not open to a Court before which such succession certificate is produced as authority to collect the debt entered therein, to question the right of the Court which granted the certificate. To hold otherwise would be to open the door to confusion and give opportunity for fraud. 27 A. 87. **B**

6. (1) Application for such a certificate must be made ¹ to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff and setting forth the following particulars, namely :—

Application for certificate.

- (a) the time of the death of the deceased ;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits ;
- (c) the family or other near relatives of the deceased and their respective residences ;
- (d) the right in which the petitioner claims ²;
- (e) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and
- (f) the debts and securities in respect of which the certificate is applied for ³.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

(Notes).

1.—“ *Application for such a certificate must be made, etc.* ”

Scope of section.

“ Section 6 which specifies the particulars to be given in applications for certificates, is drawn very widely so as to include applications by creditors, as well as by heirs, of a deceased person.” See Gazette of India, 16th March, 1889, pp. 48—54. C

2.—“ *The right in which the petitioner claims.* ”

(1) In what right can the petitioner claim.

The right in which the petitioner claims may be any of the following cases:—

- (i) His right may be as heir or creditor of the deceased or assignee of the debt under an assignment by the heir. 15 M. 419. D
- (ii) Or it may be as the representative or an assignee by devise of a debt. 4 C. 645. E
- (iii) Or it may be as the purchaser at an execution sale of a debt due to a deceased person. 18 B. 815. F

N.B.—In each case the petitioner must set forth his right to the certificate under this clause.

2.—“The right in which the petitioner claims ”—(Concluded).

(2) Application by a guardian of a minor is not contemplated by S. 6 cl. (d).

An application by a guardian of a minor is not contemplated by this section which only permits the petitioner, who claims the right for himself, to apply. 25 B. 523=3 Bom. L.R. 795. **G**

(3) Certificate to collect debts—Minor—Next friend.

A certificate may be granted to a minor through his next friend. 20 A. 352. (5 C.L.R. 517, R.). **H**

(4) Suit by assignee of a debt due to a deceased creditor.

A woman lent a sum of money to the defendant and died, leaving an adopted son, who assigned the debt to the plaintiff. Neither the plaintiff nor his assignor obtained a certificate under Act VII of 1889. The plaintiff now sued to recover the amount of the assigned debt: *Held*, that the plaintiff was not entitled to recover, no certificate having been obtained under Act VII of 1889. 15 M. 419. **I**

3.—“The debts and securities in respect of which the certificate is applied for.”

Enquiry as to existence of debts.

(a) Before granting a certificate, the Court ought to take at least some evidence going to show that the debts, in respect of which certificate is applied for, were due to the estate of the deceased. 25 C. 320. 2 C.W.N. 59; 23 C. 431. But see, also, 17 M.L.J. 257. **J**

(b) It is not competent to a Court granting the succession certificate to inquire before the grant of the certificate into the question whether the debt alleged by the petitioner is really due or not. 17 M.L.J. 257. (28 B. 119, R.) **K**

PRACTICE AND PROCEDURE UNDER THE SECTION.

(1) Certificate not necessarily to be to collect all the debts of the deceased.

A Court may legally grant to an applicant, under this Act certificate for the collection of a specified debt or specified debts of a deceased person. The Court is not bound to grant a certificate only for the collection of the whole of the debts of the deceased. 18 A 45. **L**

(2) Certificate cannot be granted to a number of representatives for fractional shares of the estate.

(a) A certificate under Act XXVII of 1860 cannot be granted to any number of representatives of the deceased either under the Hindu or the Mahomedan Law, as it would not facilitate the collection of debts to grant certificates to separate applicants entitled to fractional shares of the estate. 12 W.R. 307. **M**

(b) If some of the share-holders do not consent to one certificate being granted to all, it is within the competency of the Court to select one or more of those share-holders who would consent to act, and appoint him or them as representatives of the deceased. 12 W.R. 307. **N**

(c) If this could not be done, a Receiver might be appointed. 12 W.R. 307.

(d) A certificate cannot be granted for the collection of fractions of the debts of the deceased. 10 W.R. 105. **O**

(e) The granting of a certificate does not and cannot determine any question of title, or decide what property does or does not belong to the estate of the deceased. It merely enables the person or persons to whom

PRACTICE AND PROCEDURE UNDER THE SECTION—(Concluded).

the certificate is granted to collect the assets belonging to the deceased ; and the certificate is conclusive of his or their representative title as against all debtors of the deceased. A certificate cannot be granted for the collection of fractions of the debts of the deceased.
10 W.R. 105. P

(2-a) Certificate not to be given for collection of part only of a debt—Case in which the debt in part satisfied.

(a) A certificate for collection of debts under this Act may be given for the collection of any one or more separate debts of the deceased ; but not for the collection of part only of a debt. 19 A. 129. Q

(b) Where, however, a portion of a debt in respect of which a certificate is sought has been discharged it is not necessary for the applicant to pay duty on more than the unsatisfied portion of the debt. (*Ibid.*) R

(3) Two certificates of administration cannot run together.

Two certificates of administration cannot run together. So a widow who fails to appear and contest the grant of a certificate to another party a year before her own application cannot claim one herself now ; but she may be allowed a certificate simply appointing her guardian to the minor son alleged to be adopted by her. 1 W.R.3. S

(4) Division of certificate not contemplated by the Act.

Act XXVII of 1860 does not contemplate a division of the certificate or a power to collect fractional shares of debt. 13 W.R. 265. T

(5) Applicant not bound to mention all the debts in his application.

An applicant is not bound to mention all the debts in his application, as under S.10, he is at liberty to have the certificate extended to debts not originally mentioned. Therefore an application for certificate is not liable to be dismissed on the ground of failure to specify all the debts.
5 M.L.J. 36. U

7. (1) If the District Court is satisfied that there is ground for entertaining the application ¹, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—
Procedure on application.

(a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the Court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner ² the right to the certificate ³.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding ⁴, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto ⁵.

(4) When there are more applicants than one for a certificate, and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

(Notes).

General.

- (1) Scope and object of the section—Section compared with the corresponding section of the repealed Act XXVII of 1860.

"In section 7 it is provided that proceedings on these applications are to be of a summary character. Under section 3 of Act XXVII of 1860, the Judge had 'to determine the right to the certificate.' This phrase had led to many conflicting decisions. This act has adopted the ruling of the Madras High Courts that in determining the right to a certificate the Courts are not required to enter on the determination of intricate questions of law or of fact, but that the proper course is to issue the certificate to the person who *prima facie* has the clearest title to the succession, such as the natural heir, and to leave a person whose claim to a superior title is on reasonable grounds disputed to establish that title by regular suit. And, in deciding between various applicants who stand in pretty much the same relation to the deceased, the section further provides that the Court may have regard to the extent of interest, and the fitness in other respects, of the several applicants." See Gazette of India, 16th March 1889, Part VI, pp. 48-54. Y

- (2) Certificate if necessary for recovery of Dower.

The dower of a Mahomedan wife, whether prompt or deferred, is a debt within the meaning of S. 2 of this Act and a certificate is necessary for its recovery. 8 A.L.J. 79=9 Ind. Cas. 127. W

- (3) Right under the certificate is personal—not transferable or heritable.

A certificate for collecting the debts due to the estate of a deceased person given under Act XX of 1841 gives a personal right, and is not transferable by sale; 1 W.R.M. 29; nor can it be the subject of inheritance. A.W.N., 1887, p. 248. X

1.—"If the District Court is satisfied that there is ground for entertaining the application, etc."

- (1) Scope of the section.

(a) The Act requires the Judge upon application for a certificate to be satisfied that there is ground for entertaining the application, and if he is so satisfied, then to issue certain notices to the parties who may be interested, and to decide in a summary manner the right to the certificate. 23 C. 431 (434). Y

1.—“If the District Court is satisfied that there is ground for entertaining the application, etc.”—(Concluded).

- (b) Thus the application for certificate was rejected in the following cases for the reason that there was no ground for entertaining the application.
 - (i) When it is made by one who is not heir to the deceased creditor, such as a daughter-in-law applying for a certificate in respects of debt due to her mother-in-law. 4 M.H.C. 180. Z
 - (ii) When the application is made in respects of debts due to an endowment on the death of an incumbent. 20 C. 103. A
 - (iii) When the application for a certificate related to the debts of an intestate who has been dead for 40 years at the time of making the application, the presumption being that owing to the operation of the law of limitation there could be then no debts due to him which could be recovered. 3 C. 616. But see, also, 2 B.L.R. Ap. 26. B
 - (iv) When the application for a certificate is for the collection of a share in a debt. 13 W.R. 265, A.W.N. (1890), p. 91. C

(2) Certificate to collect debts refused to a *Karnavan* indebted to the Tarwad.

- (a) A certificate to collect debts may properly be refused to a *Karnavan* of a Malabar tarwad when the bulk of the debt to be collected is found to be due by the *Karnavan* himself under decree obtained against him by his predecessor. 5 M. 4. D
- (b) Their Lordships observed as follows :—“Ordinarily a certificate would be issued to the *Karnavan* but as the *Karnavan* is a debtor to the tarwad under circumstances which justify the tarwad in withholding their confidence from him, we do not consider that the discretion of the District Court has been improperly exercised in this case.” 5 M. 4. E

(3) Lapse of time no ground to refuse application.

Lapse of time is not a sufficient ground for refusal of an application for a succession certificate. 2 B.L.R. Ap. 26. But see, also, 3 C. 616. F

2.—“Shall proceed to decide in a summary manner.”

(1) Scope of section—There must be some inquiry under the section—Question of title.

In a proceeding under the Succession Certificate Act there must be some inquiry into the title set up by the applicant before his application is disposed of. 23 Cal. 431. (5 C.L.R. 517, Diss.; 7 M. 452, D.; 6 C. 303; 15 C. 574; 17 M. 477, R.) G

(2) The following observations of their Lordships may also be noted.

- (a) “The provisions of this section indicate the necessity of some inquiry into the right to the certificate. The inquiry is expressly directed to the summary, but it is to be an inquiry into the right to the certificate. Now, though the right to the certificate may not be the same thing as the right to the estate of the deceased proprietor, yet, on the other hand, we must take it that it is not to be altogether unconnected with that right. It would be unreasonable to hold that the right to the certificate may belong to a stranger who has no connection with the estate and the provisions of sub-ss. (3) and (4) of S. 7 go to indicate that the right to the certificate must have some connection with the right to the estate, though it may not be identically the

2.—“*Shall proceed to decide in a summary manner*”—(Concluded).

same thing as the right to the estate of the deceased. Thus, sub-S. (3) merely authorizes the Court, where the determination of the right to the certificate involves an inquiry into questions of law or fact which seem to the Court to be too intricate and difficult in a summary proceeding, to grant a certificate to the applicant if he appears to be the person having *prima facie* the best title to the certificate, but it does not authorize the Court to grant a certificate to any other person who may be best entitled to it. Then, again, sub-S. (4) by providing for a grant of a certificate to one or more of several rival applicants, regard being had to the extent of their interests and their fitness in other respects, indicates that the grant is to be limited to some one or more of the contending applicants who make out their title to the estate. There must, therefore, be some inquiry into the title set up by the applicant before his application is disposed of. 23 C. 431 (434—435.). H

(b) The Court ought to make some enquiry as to the title of the applicant, the section only meaning that the *prima facie* title ought to prevail, when there is a question of fact or law too difficult to be decided summarily. See 17 M. 477; 23 C. 431; 7 M. 452; 6 C. 303; 15 C. 574; 8 C. W. N. 51. I

(c) Although proceedings under this Act are summary, and the Judge is not called upon to enter into and decide the rights of the parties as if he were trying a suit, yet to pass a sound judicial decision he is bound at all events to enter into some inquiry, and to base his decision upon *prima facie* evidence with which he is sufficiently satisfied. 2 A.L.J. 144=A.W.N. (05), 44=27 A. 452. J

(d) The intention of sub-cl. (3) to S. 7 of the Succession Certificate Act is not to save the Court the trouble of making any inquiry at all where the applicant is not heir to the deceased, but it is to allow the *prima facie* title to the certificate to prevail when a question of law or fact arises on inquiry too difficult to be determined in a summary proceeding. 17 M. 477. K

(e) “In cases in which no complicated issues are involved, and the issues are capable of being decided without difficulty in a summary proceeding, the Court is bound to determine the right to the certificate by summary inquiry. The difficulty felt must be the result of summary inquiry, and not the *a priori* theory that every inquiry into a special ground of claim urged to the certificate necessarily involves an inquiry too intricate for determination in a summary proceeding.” *Per Curiam* in 17 M. 477 (478). L

(3) Nature of enquiry to be summary.

There must be an enquiry before a certificate is granted under the Succession Certificate Act, but the enquiry is to be a summary one, and when a Judge has legal evidence before him on which he comes to a proper conclusion, his proceedings cannot be set aside because they seem not to have been of a very protracted nature.

Such a decision does not in any way bar the rights of the parties nor does it establish the right of the party to the debt to collect which the certificate is granted. 5 C.W.N. 494. (23 C. 431; 25 C. 320; 17 M. 477; 21 B. 53 R.) M

3.—“*The right to the certificate.*”(1) **Court bound to decide the right to the certificate—Practice—Procedure.**

Under this section the District Court must decide in a summary way an application for a succession certificate even if the question at issue between the applicant and the opponent be as to the status of the family to which deceased belonged. 21 B. 53. N

(2) **Question of title.**

(a) When an application is opposed on the ground of the opponent's having a preferable title to the certificate, the Court ought to adjudicate on the title in a summary way, in order to determine who has the preferable title. 6 C. 303; 7 C.L.R. 475. O

(b) Cases, where the question of title is raised between two persons, one an undoubted natural heir and the other claiming under a special title, or between two persons equally situated so far as the question of heirship is concerned, but one of whom claims an exclusive title on some special ground, ought to be distinguished. 15 C. 574. P

(3) **Validity of will.**

(a) When, in proceedings in connection with an application for a certificate, a question arises between the widow and a brother of the deceased, the former setting up a will and the latter setting up non-division, it is sufficient if the Court decides upon the question of status of division or non-division. 11 W.R. 341. Q

(b) Where the applicant sets up a will of the deceased and the widow opposes the grant of certificate, the Court ought to decide upon the genuineness and validity of the will instead of granting the certificate to the widow on her furnishing security. 17 W.R. 277. R

(4) **Executor under a will.**

(a) The executor under a will, if it be not contested has an undoubted right to a certificate under the Act though he be not the legal heir. W.R. 1864 Mis. 4. S

(b) If the will be contested, the Judge should enquire into its validity, and, if he consider it proved, give a certificate leaving the parties dissatisfied to set it aside by a regular suit. W.R. 1864 Mis. 4. T

(c) A certificate under this Act can be granted to an executor properly appointed. 2 B.H.C. 375 (380). U

(d) As a general rule in England, security cannot be required from an executor; for the Ordinary has no authority to interpose and demand caution (security) of the executor where the testator himself required none. Wms. on Exors., 5th Edn., p. 205 cited in 2 B.H.C. 375 (380). Y

(e) Where an executor is insolvent, Courts of equity will require him to give security before he enters upon the trust. *Ibid.*, 206 cited in 2 B.H.C. 375 (380). W

(f) It would be quite within the competency of the Judge to protect all persons beneficially entitled, by taking such security as he might think necessary from the executor. 2 B.H.C. 375 (380). X

(5) **Member of a joint Hindu family.**

A certificate under Act XXVII of 1860 cannot be refused merely because the deceased was a member of a joint Hindu family. Ordinarily the managing member would be the person best entitled to the certificate, but this would not be the case where the members had fallen out. 23 W.R. 234. Y

3.—“The right to the certificate”—(Concluded).

(6) Hindu Law—Acquisitions out of salary, *prima facie* separate property—Discretion of Court.

Money connected with insurance, the *premia* for which are paid out of the salary of a deceased Hindu, is *prima facie* his separate property; and where, therefore, an application for a succession certificate by the widow of the deceased in respect of such money is opposed by his brother on the sole ground that the deceased was educated at the family expense, *held* that the certificate ought to issue in favour of the widow, under the circumstances. 29 M. 121. Z

(7) Daughter-in-law.

(a) A daughter-in-law is not the heiress of her mother-in-law according to Hindu Law. 4 M.H.C. 180. A

(b) Hence an application by a daughter-in-law under Act XXVII of 1860 for a certificate as heiress would be properly rejected upon the sole ground that the applicant was not the heiress. 4 M.H.C. 180. B

(8) Interest sufficient to oppose grant of certificate.

If a Civil Court is proceeding under S. 8 of Act XXVII of 1860 to grant or has granted a certificate authorising a person to deal with Government securities which are claimed by a third person as his property, that is a ground on which such third person may come into Court to oppose the grant of a certificate or to seek for its cancelment. 4 M.H.C. 180. C

(9) Widow.

A widow holding a succession certificate is the only person entitled to represent her deceased husband, as well for the purpose of instituting suits as for continuing suits instituted by her deceased husband. 26 M. 224; 12 M.L.J. 380. D

(10) Mother of minor son dying not leaving child or widow.

The mother of a deceased adopted son, who died a minor leaving no children or widow, will be entitled to a certificate. 3 W.R. Mis. 6. E

(11) *Dayabhaga*—Sister's daughter or sister's daughter's son, not entitled to certificate.

Where persons alleging to be the sister's daughter and sisters's daughter's son of a deceased Hindu governed by the *Dayabhaga* law, applied for a certificate under the Act, *held* that *prima facie* a sister's daughter and a sister's daughter's son are not heirs under the *Dayabhaga* law and are therefore not entitled to the certificate. 12 C.W.N. 453=35 C. 631=7 C.L.J. 555. F

(12) Illegitimate sons—Mahomedan Law.

According to Mahomedan Law, illegitimate sons can claim no relation with their father's family. 13 W.R. 265. G

(13) Certificate of Administration—Parsi Woman.

(a) Where two relatives of a deceased person severally apply, under Act XXVII of 1860, to a District Judge for a certificate to administer the estate;—*Held* that it is not a proper course for the District Judge to refer them to a regular suit. 2 B.H.C. 375. H

(b) He should determine, in the manner pointed out by the Act, whether either, and if so which, of the applicants has a right to the certificate, and grant the same accordingly, 2 B.H.C. 375. I

4.—“Questions of law or fact which seem....to be too intricate and difficult, etc.”

- (1) Court not bound to enter into an inquiry regarding nice questions of law or fact.

The Court ought not to enter into an inquiry regarding nice questions of law or fact, but is bound to grant the certificate to the person having *prima facie* the clearest title. 7 M. 452. J

- (2) Questions of disputed adoption not to be determined in proceedings under the Act.

Where on an application for a certificate under the Succession Certificate Act, S. 6, questions of adoption affecting the right to the certificate were raised, which could not be summarily disposed of, *held*, that the Judge ought to have decided the *prima facie* right of the applicant under cl. 3 or cl. 4 of S. 7 of the Act without waiting to decide the issue raised as to the adoption. 25 B. 523. K

- (3) Question of reunion need not be enquired into.

The Court is not bound to try an intricate question like that of reunion in a summary proceeding under the Act. 5 M.L.J. 86. L

- (4) Grant of certificate where will set up—Practice—Jurisdiction.

(a) Although ordinarily questions regarding a will should not be decided on a summary application for a certificate, still it cannot be said that the Court trying an application for a certificate in answer to which a will was set up as having been made by the deceased owner of the property, has no jurisdiction to try the question whether or not there was a will. 31 A. 236=6 A.L.J. 171=2 Ind. Cas. 213. M

(b) Where, therefore, the District Court found in favour of the will and dismissed the application, the High Court on appeal felt constrained to go into the question of the validity or invalidity of the will and decide it, although it pointed out that, if the application had been made to that Court in the first instance, it would hardly have decided that question but would have either exercised the discretion given by S. 7, cl. (3), or would have postponed the application, calling upon the objectors to institute within a limited time a suit to obtain probate of the alleged will. (*Ibid.*) N

(c) When an application is made under Act XXVII of 1860, it is the duty of the Judge to determine the right to the certificate, and for that purpose to decide the question of the genuineness of the will, although his decision would not be binding and conclusive if a regular suit were afterwards brought. 12 W.R. 454. O

- (5) Status of family.

Where there is a question between applicant and the opposite party as to status of the family of the deceased, the Court ought to decide the point in however summary a way it chooses. 21 B. 53. P

- (6) Legitimacy and marriage.

The Court is bound to enquire summarily into questions of legitimacy and marriage, when such questions arise in proceedings in connection with applications under the Act, W. R. 1864, Mis. 25. Q

5.—“Person having prima facie the best title thereto.”

(1) Discretion to be exercised where there are rival claimants.

- (a) Where there are rival applicants the Judge has a discretion to grant the certificate to such of them as, in his opinion, is best entitled thereto. 4 B.L.R.A.C. 149 = 13 W.R. 143; taking fitness as well as propinquity and extent of interest into consideration and protecting the interests of the others by ordering security. 12 W.R. 356; 12 W.R. 38. **R**
- (b) Where there are rival applicants, the Court must select one of them and grant the certificate to him. It cannot grant separate certificates to different individuals for partial collection of debts. 16 A. 21; 3 B.L.R.A.C. 404; 12 W.R. 307; 10 W.R. 105; 13 W.R. 265. **S**
- (c) The heir is the person who should have a certificate for the collection of debts due to the estate of a deceased person, unless there are any disqualifying circumstances. When there are several heirs competing with one another, he that is entitled to the largest interest may be entrusted with the duty of collecting debts. W.R. Mis. 41. **T**

(2) Mere nearness of kin is no reason by itself for the grant of a certificate.

Mere nearness of kin is no reason by itself for the grant of a certificate under Act XXVII of 1860. The Court is bound to determine who is a fit and proper person to obtain the certificate. It looks to fitness as well as to propinquity. 4 B.L.R. (A.C.J.) 149 (Note). **U**

(3) Rival claimants—Competency of Court to refuse to either claimant.

- (a) S. 7 of this Act makes it incumbent on the Court, where there are more applicants than one for a succession certificate, to pass a definite order giving the certificate to one applicant or another with all convenient speed. 137 P.R. (1907). **V**
- (b) If the question of title is in doubt, the Court should decide it on *prima facie* grounds to the best of its ability, give a certificate accordingly, and take security. (*Ibid.*) **W**
- (c) It should not refuse to adjudicate merely because difficult questions of law or fact arise, or because the matter is in issue in a regular suit. (*Ibid.*) **•**

(4) Natural heir and Devisee.

X

Where the natural heir and an alleged devisee under a will are rival claimants for a certificate and the will is not satisfactorily proved, the Court will be justified in granting the certificate to the heir. 15 W.R. 73. **Y**

(5) Mother and father—Mithila law.

Under Mithila Law the mother is entitled to a certificate in preference to the father. 5 C. 43. **Z**

(6) Mother and husband.

As between the mother and the husband of the deceased, the latter will be entitled in preference to a certificate. 3 W.R. Mis. 3. **A**

(7) Widow and cousin.

As between the widow and a cousin of the deceased claiming also as a partner, the former will be entitled to preference. 1 W.R. Mis. 32. **B**

(8) Widow and person setting up special title.

As between a ———, the former will be entitled to preference if the special title set up by the latter is not satisfactorily proved. 14 W.R. 115. **C**

5.—“*Person having prima facie the best title thereto*”—(Continued).

(9) **Major son and widowed mother of minor son.**

Where a Hindu governed by the *Mitakshara* Law died leaving two sons, one of whom was a minor, and a widow the mother of the minor, and applications for a certificate to collect debts due to the deceased's estate were made by the major son and the widow respectively, it was held that the major son alone was entitled to obtain such a certificate. 5 C. 219. D

(10) **Hindu widow and next reversioner.**

Where a widow claims the certificate and also the next reversioner, the Court in giving the certificate to the widow is bound to require security from her under S. 9; and even if the demand of the security be discretionary, the Appellate Court will not interfere with the exercise of the discretion. 5 M.L.J. 36. E

(11) **Childless widows of brother and nephew—Illegitimate sons.**

The childless widows of the brother and nephew of a deceased person are not entitled under the Hindu Law to be considered as the legal representatives of the deceased; and there being evidence in this case of the deceased having assigned his property to his illegitimate sons, and acknowledged them as his sons, a certificate under Act XXVII of 1860 to administer his estate was granted to them. 17 W.R. 189. F

(12) **Adopted son and widow—Adoption disputed.**

When the title of a person claiming as adopted son of the deceased is disputed the certificate may properly be granted to the widow of the deceased. 1 Agra Mis. 13. G

(13) **Son adopted after demise of adoptive father—No certificate necessary.**

In the case of an adoption by the widow, sometime after demise of the adoptive father, the adopted son need not take out a certificate in respect of outstandings that accrued due in relation to the estate while it was in the management of the adoptive mother. 5 C. 257. H

(14) **Joint Hindu family—Contest between a divided and an undivided member.**

Where a certificate of administration was granted to certain applicants who asked it with reference to a particular debt, putting in a bond of the judgment-debtor, and showing that they were joint in estate with the deceased, the certificate was held to have been rightly granted, and to have been properly refused to another member of the family who had separated from the deceased. 25 W.R. 31. I

(15) **Mother-in-law.**

The circumstance of a deceased party having, on the day of his death, informed his debtor that he had given the whole of the moneys due to him to his mother-in-law, was held to be a sufficient indication (whether the gift was valid or not) that she was the proper person to receive the money due to the deceased and the certificate under Act XXVII of 1860. 12 W.R. 239. J

(16) **Daughter-in-law.**

A Hindu daughter-in-law is not an heiress. She is consequently not entitled to a certificate in *re* her father-in-law's estate. 4 M.H.C. 180. K

5.—“*Person having prima facie the best title thereto*”—(Concluded).(17) **Executors and heir.**

Where there is an executor appointed under the will of the deceased in respect of trust property and there is also a legal heir, the former will be entitled to a certificate in respect of the trust-property and the latter in respect of the other property, if any, of the deceased. 3 B.L.R.A. C. 46=11 W.R. 388. L

(18) **Full sister's son and half-brother.**

As between the full sister's son in possession of the deceased's estate and the half-brother of the deceased, the former will be preferred. 17 W.R. 562. M

(19) **Father's brother's daughter's son and the father's father's brother's brother's son (Hindus).**

As between —, the former has a better right to a certificate after death of the widow of the deceased male owner. 11 C. 343. N

(20) **Father's brother's grandson and brother's daughter's son.**

The deceased's father's brother's grandson has a better right to a certificate than the deceased's brother's daughter's son. Proximity of residence and kinship are not considerations which can outweigh a *prima facie* better title. 4 C. 411. O

(21) **Nephew and predeceased son's daughter's son.**

A nephew of the deceased has a better right to a certificate than the deceased's predeceased son's daughter's son. 15 W.R. 328. P

(22) **Mohunt.**

As between the *chela* (spiritual son) and the *girubhai* (spiritual brother) of a deceased *mohunt* claiming a certificate in respect of the private estate of the deceased, the former ought to be preferred to the latter. 4 C. 954, 4 C.L.R. 49. Q

(23) **Ascetics (Hindu).**

When a Hindu ascetic or devotee dies, his spiritual brother or disciple or the preceptor will be entitled to a certificate; and such person can't be deprived of his right even though he is mentally incapable of succeeding to the office. 14 W.R. 383. R

A.—PRACTICE UNDER THE SECTION.

(1) **Certificate of Administration—Delegation of authority by District Judge—Irregular Procedure.**

(a) In an application for a certificate of administration, the District Judge having delegated the examination of the witnesses in the case to the Nazir of the Court, and having, on the evidence so taken, made an order granting the certificate:—*Held* that the procedure was illegal; and that the order so passed must be annulled. 2 B.H.C. 382. S

(b) Proceedings for the investigation of the title directed, and the witnesses should be examined, by the Judge himself. 2 B.H.C. 382. T

General.(2) **Nature of proceedings under Act.**

(a) The Act, as the preamble shows, has been enacted “to afford protection to parties paying debts to the representatives of a deceased person.” 8 A.L.J. 79=9 Ind. Cas. 127. U

A.—PRACTICE UNDER THE SECTION—(Continued).

General—(Continued).

- (b) The proceedings under the Act are of a summary nature in which the Court either decides the right of the applicant to the certificate or grants it to one who appears to have the best *prima facie* title thereto. (See S. 7). (*Ibid.*) **Y**
- (c) In certain cases, the Court must, and in others it may, require, as a condition precedent to the granting of a certificate, a bond for the indemnity of persons who may be entitled to the whole or any part of the debt. (See S. 9) (*Ibid.*) **W**
- (d) It is thus evident that the proceedings are in no way intended to determine the share of the applicant in the debt or to adjudicate upon the relative rights of the applicant and others therein. (*Ibid.*) **X**
- (3) **Certificate not to be granted to a number of representatives in respect of fractional shares of the estate.**
- (a) A certificate under Act XXVII of 1860 cannot be granted to any number of representatives of the deceased either under the Hindu or the Mahomedan Law, as it would not facilitate the collection of debts to grant certificates to separate applicants entitled to fractional shares of the estate. 12 W.R. 307. **Y**
- (b) If some of the share-holders do not consent to one certificate being granted to all, it is within the competency of the Court under Act XXVII of 1860 to select one or more of those share-holders who would consent to act, and appoint him or them as representatives of the deceased. 12 W.R. 307. **Z**
- (c) If this could not be done, a Receiver might be appointed under S. 101 of Act VIII of 1859. 12 W.R. 307. **A**
- (d) Act XXVII of 1860 does not contemplate a division of the certificate or a power to collect fractional shares of debt. 13 W.R. 265. **B**
- (e) A certificate cannot be granted for the collection of fractions of the debts of the deceased. 10 W.R. 105. **C**
- (f) The granting of a certificate does not and cannot determine any question of title, or decide what property does or does not belong to the estate of the deceased. It merely enables the person or persons to whom the certificate is granted to collect the assets belonging to the deceased; and the certificate is conclusive of his or their representative title as against all debtors to the deceased. A certificate cannot be granted for the collection of fractions of the debts of the deceased. 10 W.R. 105. **D**
- (4) **Two certificates of administration cannot run together.**
- Two certificates of administration cannot run together. So a widow who fails to appear and contest the grant of a certificate to another party a year before her own application cannot claim one herself now; but she may be allowed a certificate simply appointing her guardian to the minor son alleged to be adopted by her. 1 W.R. Mis. 3. **E**
- (5) **Certificate not necessarily to be to collect all the debts of the deceased.**
- A Court may legally grant to an applicant, under Act VII of 1889, certificate for the collection of a specified debt or specified debts of a deceased person. The Court is not bound to grant a certificate only for the collection of the whole of the debts of the deceased. 18 A. 45. **F**

A.—PRACTICE UNDER THE SECTION—(Continued).

General—(Continued).

(6) Certificate not to be given for collection of part only of a debt.

- (a) The plain meaning of the phrase "his debt" in S. 4 of the Act is the whole of the debt due by the debtor to the deceased, and not a portion of that debt. Such a meaning of the term (1) is against the canons of interpretation, for the natural meaning of the term "debt" is not a share of some one in that debt; (2) is opposed to the scheme of the Act, which has been enacted to afford protection to debtors, and has nothing to do with the convenience of the applicant or his right to or share in the debt; (3) will cause the splitting of an indivisible liability; and (4) will lead to the harassing of a debtor more than once on one cause of action and to multiplication of suits thereon.

Hence, no succession certificate can be granted for the collection of a part only of a debt. 8 A.L.J. 79=9 Ind. Cas. 127. G

- (b) A succession certificate to collect only a part of a debt cannot be granted. 7 A.L.J. 255=5 Ind. Cas. 424 (19 A. 129, F; A.W.N. 1901, 125, *Disappr.*) H

(7) Certificate not to be given for collection of part only of a debt—Debt in part satisfied.

- (a) A certificate for collection of debts under this Act may be given for the collection of any one or more separate debts of the deceased; but not for the collection of part only of a debt. 19 A. 129. I

- (b) Where, however, a portion of a debt in respect of which a certificate is sought has been discharged, it is not necessary for the applicant to pay duty on more than the unsatisfied portion of the debt. 19 A. 129. J

(8) Certificate to collect debts—Grant to minor through next friend.

- (a) A certificate may be granted to a minor through his next friend. 20 A. 352. (5 C.L.R. 517, R.). K

- (b) The following observations of Edge, C.J., may also be noted:—The Legislature has not prohibited, by Act No. VII of 1889, the grant of a certificate to a minor through his next friend, nor was there any such prohibition in Act No. XXVII of 1860. Where the Legislature considered that probate or administration should not be granted to a minor, it said so expressly. Such prohibition will be found in sections 183 and 189 of Act No. X of 1865 and in section 8 of Act No. V of 1881. As far back as 1879, the Calcutta High Court in 5 C.L.R. 517, inferentially decided that a certificate to collect debts under Act No. XXVII of 1860 might be granted to a minor through his next friend. In our opinion the Calcutta Court was right." 20 A. 352 (354). L

(9) Application not to be dismissed on ground that all debts are not specified.

An application for a certificate is not liable to be dismissed on the ground of failure to specify all the debts. 5 M.L.J. 36. M

(10) Appeal under the Act—No provision for memorandum of objections.

There is no provision for memorandum of objections in an appeal under this Act. 5 M.L.J. 36. N

A.—PRACTICE UNDER THIS SECTION—(*Concluded*).(General)—(*Concluded*).

(11) Proceedings under Act XXVII of 1860—Issues—Evidence.

- (a) Although no title is judicially determined as the result of an inquiry under Act XXVII, of 1860, yet the Court is bound under the Act to give the certificate to the person who makes out a title, and for that purpose, when parties are not agreed as to the facts, to try the issues in the ordinary way by the aid of evidence. 20 W.R. 476. O
- (b) The following objections of *Phear, J.* may also be noted:—"No doubt the Judge is quite right in thinking that the proceedings initiated for the purpose of obtaining a certificate under this Act are not civil proceedings in this qualified sense—namely, that no title is judicially determined between the parties as the result of the inquiry; still the Court is bound under the Act to give the certificate to the person who makes out a title; and it is for that purpose necessary, when parties are not agreed upon the facts, that the judge should try the issues in the ordinary way by the aid of the evidence put forward by the parties.

It appears that both the petitioners desired to put before the Court a very considerable body of evidence, partly documentary and partly the oral testimony of witnesses whom they had brought before the Court for the purpose; but the Judge disregarded the witnesses. We understand he would not permit any of them to be called and none of the documentary evidence was therefore properly proved. So that, for that reason, if for no other, the Judge was without evidence before him upon which he could judicially arrive at any opinion upon the disputed issue or issues of fact.

On the whole, it seems that the inquiry has been insufficient; in truth, there has been no proper inquiry at all, and therefore the order of the Judge must be set aside, and the petitions referred back to him in order that he may hear them and determine the right of the petitioners under the provisions of S. 3, Act XXVII of 1860." 20 W.R. 476. P-R

(12) Applicability of S. 158 of the C.P. Code, 1882—Failure of opposing party to pay costs of adjournment.

S. 158 of the Code of Civil Procedure is inapplicable to proceedings under the Act. Failure of an opposing party to pay costs of an adjournment asked for by him is no ground for refusing to hear his evidence, unless there was an express order making payment of such costs a condition precedent to the enquiry. 21 M. 403. S

B.—GRANT OF JOINT CERTIFICATE.

(1) Joint certificate, if can be granted—Views of various High Courts.

- (a) Under the provisions of the Succession Certificate Act (VII of 1889), a joint certificate to recover debts cannot be granted. 15 B. 684 (5 A. 195; 11 B. 179). See, also, 5 C.L.R. 368. T
- (b) R and his sons, L and S were members of an undivided family. S predeceased R, who subsequently died, leaving L him surviving, and on the death of L the widows of L and S applied for a joint certificate

B.—GRANT OF JOINT CERTIFICATE—(Concluded).

of heirship to the estate of R. Before their application was heard, L's widow repudiated the joint application, and prayed for the grant of a certificate to her alone. The District Judge, however, ordered a joint certificate to be issued to the two widows. On appeal from this order by L's widow, *held*, that, under Act XXVII of 1860, a joint certificate could not be granted. S having predeceased R, his interest in the family property and sacra reverted to R and L, and after L's death the estates vested in L's widow, who had, therefore, a better claim to be entrusted with getting in the debts.

The order of the Lower Court was varied by directing the certificate to go to L's widow alone on her giving security for half the amount of the outstandings. 11 B. 179. U-Y

(c) A District Court acting under S. 7 must, if there are several applicants, elect to which, if any, a certificate should be granted. It is not competent to such Court to grant separate certificates to different persons for partial collection of the debts in respect of which a certificate is sought. 16 A. 21. W

(d) The Madras High Court has held that "It is not illegal to grant a joint certificate to two persons who claim adversely to each other to be entitled to collect the debts due to the estate of the deceased under Succession Certificate Act VII of 1889." 19 M. 497=6 M.L.J. 90. X

(e) Their Lordships observed as follows:—"No doubt the cases in 16 A. 21; 15 B. 684, show that ordinarily certificates should not be granted to rival claimants jointly. But in the present case it is clear that the real object of the application for certificate was to raise questions as to the validity of the adoption of the respondent, a matter which was the subject of the litigation for many years (11 M. 43) and which the appellant's Vakil states is now also the subject of a suit brought to set aside the adjudications made in favour of the respondent. In these circumstances I do not think it proper to interfere with the order of the District Judge." 19 M. 497 (498)=6 M.L.J. 90. Y

(2) Grant of joint certificate—Appeal.

The grant of a joint certificate is, by itself, no ground for an appeal. 17 W.R. 238. Z

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application¹ for the certificate, and may thereby empower the person to whom the certificate is granted—

Contents of certificate.

- (a) to receive interest² or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

(Notes).

1.—“ *It shall therein specify the debts and securities set forth in the application.* ”

(1) **Petition for succession certificate, contents of.**

A Court has no power to grant a Succession Certificate except upon a petition complying with the provisions of the Act. Amongst other things, it must specify each debt and security in respect of which the certificate is asked, and the certificate, when granted, must specify each debt and security covered by it. 8 Ind. Cas. 996. **A**

(2) **Failure to specify debts—Effect.**

An application for a certificate is not liable to be dismissed on the ground of failure to specify all the debts. 5 M.L.J. 36. **B**

(3) **Deposit in Bank, not security.**

This section cannot be applied to the case of a fixed deposit in a bank, because the latter is not a “ security ” within the meaning of S. 3 (2), *supra*. 28 A. 477 = A.W.N. 1906, 94. **C**

2.—“ *May thereby empower the person . . . to receive interest.* ”³

Certificate granted to widow with direction that she should enjoy only the interest on money collected—Suit by widow for declaration as to her absolute right if maintainable.

Where a Hindu widow applied for a Succession Certificate to enable her to collect the debts of her deceased husband, and was opposed by the next reversioners upon the ground that they had no objection to her enjoying only the interest on the money during her life, and an order to that effect was passed, whereupon she brought a suit for declaration that she was entitled to the whole sum of money, *held* that the suit was maintainable, the limitation upon her power to get in the money having been placed at the instance of the reversioners, and that she need not have appealed from the original order under S. 19 of the Act. 7 A.L.J. 311. **D**

9. (1) The District Court shall, in any case in which it proposes to proceed under sec. 7, sub-sec. (3) or sub-sec. (4)

Requisition of security from grantee of certificate¹.

and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to ensure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as

if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

(Notes).

1.—“Requisition of security from grantee of certificate.”

(1) Certificate to guardian—Security necessary.

It is improper to grant a certificate to a guardian of a minor without requiring security. 25 B. 523; 3 Bom. L R. 795. **E**

(2) Widow and next reversioner, contest between—Security.

Where a widow claims the certificate and also the next reversioner, the Court in giving the certificate to the widow is bound to require security from her under S. 9; and even if the demand of the security be discretionary, the Appellate Court will not interfere with the exercise of the discretion. 5 M.L.J. 36. **F**

(3) Effect of security taken.

The security taken does not protect the contingent interests of reversioners, when the certificate is granted to the real heir. 5 Bom. L.R. 929. **G**

PRACTICE UNDER THE SECTION.

(1) Appeal from order directing security to be furnished.

(a) An appeal does not lie against an order directing security to be furnished, such direction being discretionary with the Court. 19 M. 199; 5 M. L.J. 36; 3 A. 304; 17 W.R. 566; 7 B.H.C. Ap. 26; 1 C. 127; 24 W. R. 362; 6 Ind. Cas. 599=7 M.L.T. 246. **H**

(b) If, however, in a contested application, the Court grants the certificate to one of the rival claimants on the condition of security being furnished, such order is one granting certificate and is appealable. 20 M. 442; 25 C. 320; 2 C.W.N. 59. But see 19 B. 790; 13 A. 214; and A.W.N. (1903), 225. **I**

Compare 20 C. 641.

(2) Appellate Court will not interfere with lower Court's discretion.

The Appellate Court will not interfere with the discretion of the Court below as to the form of the security. 5 M.L.J. 36. **J**

(3) Appeal under this Act—Memo of objections.

There is no provision for memorandum of objections in an appeal under the Act. 5 M.L.J. 36. **K**

(4) Order to file security—Particulars as to amount, etc., to be specified.

Where a judge acting under this section orders that security should be furnished by a person to whom a certificate is granted, the amount of the security and the time within which it is to be furnished must be specified in the order. 28 A. 477=A.W.N. (06), 94. **L**

10. (1) A District Court may from time to time, on the applica-

Extension of certificate.

tion of the holder of a certificate¹ under this Act, extend the certificate² to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

(Notes).

1.—“On the application of the holder of a certificate.”

Application for extension cannot be made by person other than the certificate-holder.

An application for extension of a certificate under this section can be granted only when it is made by the holder of the certificate, and not when it is made by an assignee or by a third party. 6 M.L.T. 161=3 Ind. Cas. 84. **M**

2.—“Extend the certificate.”

Appeal from order extending certificate.

An order extending a certificate is not one granting a certificate. No appeal lies from such an order. 25 M. 684. **N**

Forms of certificate and extended certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in sec. 8¹ or by substituting any one for any other of those powers.

Amendment of certificate in respect of powers as to securities.

(Note).

1.—“Amend the certificate by conferring any of the powers mentioned in section 8.”

Case where the persons holding certificate is simply guardian of minor.

In cases where the person holding the certificate is simply the guardian of a minor, the debts in respect of which the certificate is granted being due to the minor, the Court has refused to alter the certificate by giving the holder power to negotiate the same. 8 C. 300. **O**

13. (1) For Arts. 11 and 12 of the first schedule to the Court-
Amendment of Act fees Act, 1870, the following shall be substituted,
VII, 1870. namely:—

NUMBER.		PROPER FEE ¹ .
" 11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value : provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.
" 12. Certificate under the Succession Certificate Act, 1889.	In any case ...	Two per centum on the amount or value of any debt or security specified in the certificate under sec. 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under sec. 10 of the Act.
" 12-A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.		NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.
		(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
		(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and
		(2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees.

(2) In the Court-fees Act, 1870, sec. 19, cl. viii, for the words and figures "and certificate mentioned in the First Schedule to this Act annexed, No. 12," the words and figures "and, save as regards debts and securities, a certificate under Bombay Reg. VIII of 1827" shall be substituted.

(Notes).

General.

Object of the Court fees.

"Succession or, as they are often termed, death duties are recognised as one of the least objectionable forms of taxation. If there be one occasion more than another upon which a tax can fairly be levied upon property, it is when the owner has ceased to exist and the property is about to pass to a person who has done nothing to acquire it except being born into the world—an occasion on which he plays a passive rather than an active part.

"The Europeans in India, and the Eurasians, Jews, Armenians, Parsis and others who have not the privilege of being Muhammadans, Hindus or Buddhists, are practically obliged to take out probate or administration as the case may be, and to pay the succession-duties on the whole estate or inheritance by the combined effect of the Succession Act and the Court-fees Act.

"It had long been seen that it would be fair in principle to render the payment of such duties compulsory on all alike. But it was found that it would be very difficult, if not impossible, without great hardship, to render it compulsory upon all the inhabitants of India to take out probate or administration so as to subject them to these duties.

"It takes years for any Act introducing a novelty to get known and worked in the remoter districts.

"If an act like the Succession Act had suddenly been made compulsorily applicable for the whole of India, the consequences would have been very serious. The people would for a long time have paid no attention to it, and their dealings with their property after a succession would have been invalid, and much confusion and injustice would have ensued.

"But there appeared two methods by which something could be got out of such clauses by way of succession duties, one was by encouraging Hindus and Muhammadans to resort of their own accord to the probate and administration procedure on account of the certainty of title which it gives and its manifold advantages. Even if they did so, a very large quantity of Hindu property would escape taxation under the present law, owing to the *mitakshara* doctrine of survivorship among co-owners. The other method was by means of the Certificate Act.

"The certificate procedure was introduced in 1841 for the purpose of protecting debtors from being harassed by conflicting claimants after the death of the creditor, and to facilitate the collection of debts on succession by the issue of a certificate which should render it safe for the debtor to pay the holder of it. Various amending Acts were introduced from time to time, and the whole was consolidated in Act XXVII of 1860.

General—(Concluded).

"The certificates were therefore made liable to a duty by the Court-fees Act of 1870. P

N.B.—But even here it should be noted that the duty on the certificate only extended to outstanding claims, but not on property already in the possession of the deceased while the other subjects paid on the whole estate. See Gazette of India, 16th March 1899, pp. 48-54. Q

1.—"Proper fee."**Application for certificate in respect of debt partly discharged.**

In the case of an———duty need be paid only on the undischarged portion of the debt, 19 A. 129. R

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870, in respect of the certificate or extension applied for.

Mode of collecting court-fees on certificates.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-sec. (1) and not expended under sub-section (2) shall be refunded to the person who deposited it ¹.

(Notes).**1.—"Refunded to the person who deposited it."****Refund of deposit.**

(a) If an application for a Succession Certificate is granted, the sum deposited by the applicant cannot be refunded; but if no order for the grant of the certificate has been made, a refund can take place. 21 M. 241. S

(b) Their lordships observed as follows :—Clauses 2 and 3 of sec. 14 of the Act must be read together. If the application is allowed, *i.e.*, if the order for the grant of a certificate has been made, the sum in deposit becomes at once legally appropriated, as duty, to the extent of the debt covered by the order, and cannot be refunded." 21 M. 241 (242). T-Z

Local extent of certificate.

15. A certificate under this Act shall have effect throughout the whole of British India.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of sec. 1, Sub-sec. (4), or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of certificate 1.

(Notes).

1.—“Effect of certificate.”

(1) Effect of certificate under Act XXVII of 1860.

- (a) The effect of such certificate is that it is conclusive of the representative title against all debtors to the deceased and affords full indemnity to all debtors paying their debts to the person to whom the certificate has been granted. 8 W.R. 317. **A**
- (b) Under Act XXVII of 1860 no question of title to any specific property be tried. A party seeking to raise such a point should be referred to a regular suit. 17 W.R. 193. **B**
- (c) The receipt of money under a certificate granted in pursuance of Act XXVII of 1860 does not give a title to the money; the holder only becoming trustee for the person to whom the money belongs. 23 W.R. 270. **C**
- (d) The certificate under Act XXVII of 1860 does not determine any question of heirship, but merely protects debtors of deceased person from liability for payments made to a certificate-holder. 2 N.W.P. 320. **D**
- (e) A certificate under Act XXVII of 1860 cannot determine any question of title, or decide what property belongs to the estate of the deceased; it merely enables the holder to collect the assets of that estate and is conclusive of his representative title as against all debtors to the deceased. 10 W.R. 105. **E**
- (f) In a proceeding to obtain a certificate under Act XXVII of 1860 for the Collection of debts payable to the representatives of deceased persons, the Court determines merely that the applicant is entitled to receive a certificate and not his title as heir or legal representative of the deceased. 3 N.W.P. 320. **F**
- (g) The rights between each other of several persons claiming to be interested in the property of the deceased are not for consideration and determination in such a proceeding. 3 N.W.P. 320. **G**
- (h) The Act does not authorize the grant of a certificate for a portion of the property or debts, whether such portion be separate and defined or not. 3 N.W.P. 320. **H**

(2) Right of person obtaining certificate as against relatives of the deceased.

The right of a person obtaining a succession certificate to the estate of a deceased person to institute a suit for a debt mentioned in the certificate or to prosecute a suit commenced by the deceased in his life-time, is absolute and conclusive as against the right of other relatives of the deceased. 12 M.L.J. 380 (384). **I**

(3) Dispute as to succession to a Mutt—Jurisdiction of magistrate.

- (a) A Magistrate cannot proceed under section 318 of the Code of Criminal Procedure 1872, in a case of dispute arising out of a right of succession to a mutt and its appurtenances, but should apply to the judge under the provisions of Act XIX of 1841 to appoint a curator or make some order with regard to the property, till the right of succession is determined. 11 W.R., Cr., 23. **J**
- (b) A certificate under Act XXVII of 1860 simply empowers the person to whom it is granted to demand and receive the debts due to the deceased, and is in no way a determination of a competent Civil Court of

1.—“*Effect of Certificate*”—(Concluded).

the right of such person to possession of land under attachment under Sec. 319 of the Code of Criminal Procedure, 1872. See 9 W.R., Cr., 18. K

(4) **Grant of certificate—No proof of possession.**

The grant of a certificate under Act XXVII of 1860 is not sufficient proof of possession to entitle the holder to an order under the Criminal Procedure Code, 1872, sec. 530, declaring him to be in possession. 25 W.R., Cr., 16. L

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

Effect of certificate granted or extended by British representative in foreign State 1.

(Notes).

1.—“*Effect of certificate granted or extended by British representative in foreign State.*”(1) **Certificate granted by Political Agent of a Native State.**

A Succession Certificate granted by the Political Agent of a Native State, and properly stamped, must be recognized by the Courts in British India, and would preclude the granting of a certificate by a Civil Court. 19 B. 145 (149). M

(2) **Suit to set aside certificate granted by the Resident at Cochin.**

*Defendant No. 1, who was domiciled in the Native State of Cochin, obtained from the Resident a certificate to collect the debts of the deceased karnavan of the Plaintiff's tarwad. The plaintiff whose domicile was the same as that of defendant No. 1 sued in British Cochin for a declaration of his right to receive the interest accrued due on certain Government promissory notes, being the property of his deceased karnavan. N

Held, that the suit did not lie, and that the appellant should either have established his representative right by suit in the Court of Native Cochin and then applied to the Resident for a certificate, or have brought his action against the Government of India, joining defendant No. 1 as a party to such an action. 16 M. 405. O

(3) **Probate issued from Native Court in Cutch—Certificate of Political Agent—Suit in British India.**

A suit in British India by the executors of the will of a native of Cutch was dismissed, on its appearing that the plaintiffs were furnished only with probate issued from a Native Court, of which they produced a copy certified by the Political Agent of Cutch and since stamped in accordance with the Court Fees Act, 1870. P

1.—“Effect of certificate granted or extended by British representative in foreign State”—(Concluded).

Held, that the plaintiffs were not entitled to a decree without taking out probate or letters of administration in British India under Act V of 1881 or a certificate under Act VII of 1889 but instead of dismissing the suit, the Court should have allowed time for the plaintiffs to have so completed their title to sue. 17 M. 14. Q

Revocation of certificate.

18. A certificate granted under this Act may be revoked for any of the following causes, namely:—

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently ¹ by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of an untrue allegation of a fact ² essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked ³.

1—“That the certificate was obtained fraudulently, etc.”

(1) General principle of this provision.

It is a power inherent in every Court of Justice, on finding that an order has been obtained from it by fraud and misrepresentation, and that if the real facts had been known to the Court it would not have acted in the matter, to recall the order made in ignorance of the true circumstances by reason of the misrepresentation alleged, and if a certificate had been fraudulently obtained, the District Judge, who granted it, has power to recall it. 8 B.L.R. Ap. 13. R

(2) Act XL of 1858—Minor’s rights—Appeal—Inherent power of a Court.

Where a Judge cancels his own order under Act XL of 1858, appointing the Collector to take charge of a minor’s estate, a friend of the minor on behalf of the minor as the party interested, is at liberty to appeal under the provisions of S. 28. S

Unless such power is expressly taken away or its exercise rendered unnecessary, every Court has power to recall an order made by itself on its being satisfied that the order was obtained by fraud or misrepresentation or suppression of fact. 13 W.R. 256. T

2.—“That the certificate was obtained by means of an untrue allegation of a fact.”

Mistake of fact.

The Court has power to revoke a certificate granted by it under a mistake of fact, 19 B. 821. U

3.—“That a decree or order.... renders it proper that the certificate should be revoked.”

(1) Joint family—Death of one member—Certificate to widow—Suit by member for declaration.

(a) S. 18 cl. (e) applies only when an application is made to revoke a certificate on the ground that a decree or order of a competent Court has already been obtained “in a suit or other proceeding with respect to the effects comprising debts or securities specified in the certificate. 15 M.L.J. 399. Y

(b) The Act does not in any way interfere with or limit the right of anyone to bring any suit which he may think fit to bring and which he otherwise is by law entitled to bring. Any person may bring a suit for a declaration in any manner he thinks fit, and if the subject matter of the declaration sought for is within the Jurisdiction of the Court in which the suit will lie. (*Ibid.*) W

(c) Hence, a suit for a bare declaration by a member of joint Hindu family that he was entitled to collect the debts standing in the name of a deceased member was held to be maintainable although a certificate under Act VII of 1889 had been granted already to the widow. (*Ibid.*) X

(2) Judge sitting on original side of the High Court, powers of.

A Judge sitting on the Original Side of the High Court cannot grant a certificate of administration in supersession of one granted by the District Judge. 5 B.L.R. Ap. 21. Y

(3) Case where court referred the party to regular Suit.

A certificate under Act XXVII of 1860 having been granted to the widow of a deceased party, his sister's son subsequently represented that he was entitled to the estate under a will, and prayed that that the certificate might be cancelled. Z

Held that as notice had been issued, and the petitioner did not appear and object to the widow obtaining the certificate, the Judge was right to refer him to a regular suit. 19 W.R. 252. A

19. (1) Subject to the other provisions of this Act, an appeal shall lie¹ to the High Court from an order of a District Court² granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court⁽²⁾, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-sec. (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure (Act XIV of 1882).

(3) Subject to the provisions of sub-sec. (1) and of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by sec. 647 of that Code, an order of a District Court under this Act shall be final.

(Notes).

General.

Scope of section.

The section clearly reserves the revisional powers of the High Court as supplementing its appellate jurisdiction. 19 B. 821. B

I.—“An appeal shall lie.”

1.—WHAT ORDERS APPEALABLE.

(1) Refusal of certificate to heirship under Bombay Reg. VIII of 1827—Appeal.

By virtue of this section, an order under Bombay Reg. VIII of 1827 refusing to grant a certificate of heirship is appealable. 19 B. 399; 18 B. 748; 17 B. 203. G

(2) Grant of certificate conditional on security filed—Appeal.

(a) An order granting a certificate of succession, conditional on security being given, is an order “granting a certificate” within the meaning of this section, and is therefore appealable. 139 P.R. (1908)=4 P.L.R. (1909)=156 P.W.R. (1908). D

(b) Where in a contested application the Court orders the grant of a certificate to one of the rival claimants on condition of security being furnished, such an order is one granting a certificate and is appealable. 20 M. 442; 25 C. 320; 2 C.W.N. 59. E

But see 19 B. 790 and 13 A. 214; Compare 20 C. 641. F

(3) Order granting Certificate, conditional, upon giving security.

(a) Where, on an application for a certificate of succession under the Succession Certificate Act (VII of 1889), an order was made granting the certificate conditionally upon the applicant's giving security: G

Held, that this was an order “granting, refusing or revoking a certificate” within the meaning of S. 19 of the Act, and that therefore an appeal would lie therefrom. 25 Cal. 320=2 C.W.N. 59. H

(b) The order which the legislature intended to be appealable was the decision of the Court as to who was or was not the proper person to be granted the certificate, and not the question whether or not that person should within definite or indefinite period furnish security. (*Per Richards, J., dubitante*), 2 A.L.J. 606. I

(c) It would involve a great deal of unnecessary delay and expense if no appeal lay from an order granting certificate subject to security being given until there has been a failure to comply with the condition imposed. The successful applicant may be put to great unnecessary expense in furnishing the security in the event of the appeal being allowed. (*Ibid.*) J

(4) Order refusing to revoke certificate.

It has been *held* under the present Act that an appeal lies from an order refusing to revoke a certificate. 19 B. 821. K

2.—WHAT ORDERS ARE NOT APPEALABLE.

(1) Order directing the issue of a certificate of succession on the applicants furnishing security.

An order directing the issue of a certificate of succession on the applicant's furnishing security is not one “granting, refusing or revoking” a certificate, and is not appealable. 19 B. 790; 13 A. 214; 5 M.L.J. 36; 26 A. 173; 2 A.L.J. 606. L

(2) Order extending a certificate.

An order extending a certificate is not one granting a certificate. No appeal lies from such order. 25 M. 634. M

1.—“An appeal shall lie”—(Concluded).

2.—WHAT ORDERS ARE NOT APPEALABLE—(Concluded).

(3) Order directing fresh security.

An order, directing fresh security to the extent to which a security, formerly furnished under Act XXVII of 1860, has been diminished by sale of the property secured or otherwise, is not appealable either under Act XXVII of 1860 or under this Act. 20 C. 641. N

(4) Order requiring party to furnish security.

A party dissatisfied with an order requiring him to furnish security, cannot appeal against it, since the direction is discretionary with the Court. 19 M. 199; 5 M.L.J. 36; 3 A. 304; 17 W.R. 566; 7 B.H.C. Ap. 36; 1 C. 127; 24 W.R. 362. O

(5) Order of a District Judge refusing an application to re-call a certificate granted by him.

In a case decided under the Old Act, it has been held that such an order is not appealable. 6 C. 40. P

(6) No appeal lies on the ground of insufficiency of security.

No appeal lies against an order made, whether in pursuance of the directions of the High Court or otherwise by a District Judge as to security on the ground that such security is insufficient. 20 C. 245. Q

(7) No appeal lies as to costs alone.

In cases under this Act where an appeal is prohibited by this section no appeal will lie as to costs alone. A.W.N. (1892) 35. R

3.—MISCELLANEOUS.

(1) Second Appeal.

There is no provision in the Act for a—. 17 M. 167; 4 M.L.J. 72. S

(2) Memorandum of objections.

No———can be put in in an appeal under the Act. 5 M.L.J. 36. T

(3) Discretion of Lower Court as to form of security.

The Appellate Court will not interfere with the discretion of the Court below as to the form of the security. 5 M.L.J. 36. U

(4) Where a widow claims the certificate and also the next reversioner, the Court in giving the certificate to the widow is bound to require security from her under S. 9; and even if the demand of the security be discretionary, the Appellate Court will not interfere with the exercise of the discretion. 5 M.L.J. 36. V

2.—“District Court.”

District Court if includes Court of Agent, Vizagapatam.

The Court presided over by the Agent to the Governor, Vizagapatam, being a “District Court” within the meaning of S. 3 of the Act, an appeal lies to the High Court under this section from the order of the Agent as from an order of the District Court. 31 M. 262=3 M.L.T. 264=18 M.L.J. 252 (18 M. 227, *not F.*). *Vide* also notes under S. 3 (1), *supra*. W

20. Save as provided by this Act, a certificate granted thereunder

Effect on certificate of previous certificate, probate or letters of administration.

in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

Effect on certificate of subsequent probate or letters of administration.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under S. 18, or by reason of the grant of a certificate to a person named in an appellate order under S. 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

Validation of certain payments made in good faith to holder of invalid certificate.

23. (1) Where a certificate has been granted under this Act or Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841 shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

Prohibition of exercise of certain powers by curators.

(2) But persons who have paid debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of

Effect of certain probates and letters.

securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865 :

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit ¹ or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

(Notes).

1.—“No decision under this Act....shall....bar the trial of the same question in any suit.”

Decision under the Act, no bar to regular suit.

(a) A decision under the act as to the validity of a Will will not bar a regular suit between the same parties to contest the validity of the same Will.
16 W.R. 214 ; 18 W.R. 255. **X**

(b) The grant of a certificate on the title afforded by a Will which gives the grantee the estate in respect of which the debts accrued does not establish a right as executor or legatee within the meaning of the words of S. 187 of the Succession Act. 23 W.R. 252. **Y**

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

26. (1) The Local Government may, by notification in the Official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-sec. (1) of S. 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorizes the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by S. 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-sec. (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

(Notes).

General.

(1) Object of the section.

If there is any great increase in the number of applications for certificates after the passing of this Bill, it was thought that it would be essential that the Courts which are to exercise jurisdiction with respect to them should be more accessible and less expensive than District Courts. *See Gazette of India, 16th March, 1889, Part VI. pp. 48-54. Z*

(2) Jurisdiction to hear applications under Bombay Reg. VIII of 1827.

A Subordinate Judge invested, by government, with jurisdiction to hear applications under this Act, has jurisdiction to hear and dispose of applications under Bombay Reg. VIII of 1827. 17 B. 230. **A**

(3) Appeal against appellate orders.

In cases in which Courts inferior to that of a District Judge are competent to entertain and dispose of applications under this Act, an appeal lies to the District Court and the latter's order in appeal shall be final. There is no provision for a second appeal. 17 M. 167. **B**

(4) Notifications issued under this section.

For notifications issued under this sub-section for,

- (1) Assam, *See Assam Local R. & O.*
- (2) Bengal, in *Ben. Local Stat. R. & O., Vol. II.*
- (3) Bombay, *See Bom. Local R. & O., Vol. I.*
- (4) Central Provinces, *See Central Provinces Local R. & O.*
- (5) Coorg, *See Coorg List of Local R. & O.*
- (6) Madras, *See Mad. List of Local R. & O., Vol. I.*
- (7) United Provinces of Agra and Oudh, *See U.P. List of Local R. & O., Vol. I. C*

1.—BENGAL.

Notifications by the Bengal Government.

Notification No. 433 J.D., dated the 4th May, 1900 (published in the Calcutta Gazette of 1900, Part I, p. 462). **D**

General—(Continued).**1.—BENGAL—(Concluded).**

In the exercise of the power conferred by S. 26, sub-sec. (1) of Act VII of 1889 (the Succession Certificate Act), the Lieutenant-Governor invests the Senior Munsif at Bogra and the Senior Munsif at Seraganj, in the districts of Pabna and Bogra, *ex-officio* with the functions of a District Court under that Act, within the local limits of their respective jurisdictions.

2.—BOMBAY.**Notifications by the Bombay Government.**

Investiture of certain Courts in the Bombay Presidency with the functions of a District Court under the Act.

(a) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the undermentioned Courts in the Bombay Presidency, inferior in grade to a District Court, with the functions of a District Court under the said Act.—

- (i) The Court of the joint Judge of Ahmedabad ;
- (ii) The Courts of the Assistant Judges of Ahmedabad, Thana and Satara ;
- (iii) The Courts of all the Second-class Subordinate Judges in the Districts of Ahmedabad, Thana, Ahmednagar, Khandesh, Nasik, Poona, Satara and Dharwar.

(Notification No. 4857, dated the 12th September, 1889, p. 795 of the B. G. G. for 1889, Pt. 1). E

(b) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Courts of the Second-class Subordinate Judges in the Belgaum District, inferior in grade to a District Court, with the functions of a District Court under the said Act.

(Notification No. 609, dated the 31st January, 1890, p. 77 of the B.G.G. for 1890, Pt. 1). F

(c) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Courts of Subordinate Judges in the Sholapur-Bijapur District, with the exception of those at Sholapur and Bijapur, inferior in grade to a District Court, with the functions of a District Court under the said Act.

(Notification No. 725, dated the 6th February, 1890, p. 118 of the B.G.G. for 1890, Pt. 1). G

(d) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Courts of all the Subordinate Judges in the Surat District (including Broach), inferior in grade to a District Court, with the functions of a District Court under the said Act.

(Notification No. 3527, dated the 3rd July, 1890, p. 631 of the B.G.G. for 1890, Pt. 1). H

(e) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Court of the First-class Subordinate Judge of Ahmedabad with the functions of a District Court under the said Act.

General—(Continued).

2.—BOMBAY—(Concluded).

(Notification No. 4192, dated the 2nd August, 1890, p. 803 of the B.G.G. for 1890, Pt. 1). I

- (f) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Court of the First-class Subordinate Judge of Ahmedabad with the functions of a District Court under the said Act.

(Notification No. 5276, dated the 27th September, 1890, p. 993 of the B.G.G. for 1890, Pt. 1). J

- (g) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Court of the First-class Subordinate Judge of Dharwar with the functions of a District Court under the said Act.

(Notification No. 5424, dated the 3rd October, 1890, p. 1008 of the B.G. G. for 1890, Pt. 1). K

- (h) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest with the functions of a District Court under the said Act, the Courts of all the Subordinate Judges in this Presidency which have not been already so invested.

(Notification No. 5861, dated the 25th October, 1890, p. 1072 of the B.G. G. for 1890, Pt. 1). L

- (i) In exercise of the power conferred on Local Governments by S. 26 (1) of Act VII of 1889, the Governor in Council is pleased to invest the Court of the Deputy Collector (exercising the powers of a Civil Judge) in the Thar and Parkar District with the functions of a District Court under the said Act.

(Notification No. 6477, dated the 7th December, 1891, p. 986 of the B. G. G. for 1891, Pt. 1). M

- (j) In exercise of the power conferred by sub-sec. (1) of S. 26 of the Succession Certificate Act, 1889. His Excellency the Governor in Council is pleased to invest the Court of the Assistant Collector in charge of the Nara Valley Sub-Division in that part of the Province of Sind which at date of the passing of Bombay Act XII of 1866 was in charge of the Political Superintendent of Thar and Parkar with the functions of a District Court under the said Act.

(Notification No. 805-B, dated the 4th February, 1895, p. 114 of the B. G. G. for 1895, Pt. 1), as amended by Notification No. 3904, dated the 13th June, 1895, (p. 704 of the B. G. G. for 1895, Pt. 1). N

- (k) In exercise of the power conferred on Local Governments by S. 26 (1) and S. 28 of Act VII of 1889, the Governor in Council is pleased to invest the Court of the Assistant Judge of Shikarpur, which is inferior in grade to a District Court with the functions for District Court under Act VII of 1889 and under Bombay Reg. VIII of 1827.

(Notification No. 7230, dated the 20th October, 1899, p. 1533 of the B.G.G. for 1899, Pt. 1). O

General—(Concluded).**3—MADRAS.****Notifications by the Madras Government.**

The following notifications have been published :—

- (a) Investing the Court of the Subordinate Judges of Cocanada and Ellore in the Godavari District with the functions of a District Court. (Notification No. 174, Judicial, dated the 12th May, 1890, Fort St. George Gazette, 1890, Pt. I, p. 32S.) **P**
- (b) Investing the Courts of the Subordinate Judges of Madura (East and West) and Cochin and of certain District Munsifs with the functions of a District Court. (Notification No. 383,) Judicial, 20th October, 1891, Fort St. George Gazette, Pt. II, p. 155.) **Q**
- (c) Investing the Court of the Special Assistant Agent, Godavari, with the functions of a District Court. (Notification No. III, Judicial, 29th February, 1892, Fort St. George Gazette, 1892, Pt. I, p. 240.) **R**
- (d) Investing the Court of the District Munsif of Bapatla in the Krishna District with the functions of a District Court. (Notification No. 63, Judicial, 7th February, 1893, Fort St. George Gazette, 1893, Pt. I, p. 140.) **S**
- (e) Investing the Courts of the Subordinate Judges of Tanjore, Kumbakonam, and Negapatam in the Tanjore District with the functions of a District Court. See Notification No. 211, Judicial, 10th May, 1905, Fort St. George Gazette 1905, Pt. I, p. 374. **T**
- (f) Investing the Court of the Subordinate Judges of Mayavaram and Tanjore, with the functions of a District Court. See Notification No. 481, Judicial, 14th October, 1907, Fort St. George Gazette, 1907, Pt. I, p. 1062. **U**
- (g) Investing the Courts of the Assistant Agent of the Bhadrachalam and Polavaram Divisions in the Godavari District. See Notification No. 409, Judicial, 15th August, 1906, Fort St. George Gazette 1906, Pt. I, pp. 915—916. **V**

4—NORTH-WEST PROVINCES.**Notification by the Government of U.P. of Agra and Oudh.**

Investing all Munsiffs in the Province of Agra with the functions of a District Court under the Act, within the local and pecuniary limits of their ordinary original jurisdiction as Munsiffs, G.O. No. 359, vii—10 B. 88, dated 7th May, 1890. **W**

- 27.** (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in S. 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827, the provisions of S. 3, S. 6, sub-s (1), cl. (f), and Ss. 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of S. 98 of the Probate and Administration Act, 1881 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

(Note).

Order under Bombay Reg. VIII of 1827—Appeal.

By virtue of this section, an order under Bombay Reg. VIII of 1827 refusing to grant a Certificate of heirship is appealable. 18 B. 748. X

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See Section 2.)

Number and year.	Subject or title.	Extent of Repeal.
Acts of the Governor-General in Council.		
XXVII of 1860 ...	Collection of debts on successions ...	So much as has not been repealed.
XIV of 1869 ...	Bombay Civil Courts Act, 1869 ...	In sec. 16 from and inclusive of the words and figures "Bombay Reg. VIII of 1827" down to and inclusive of the words "representatives of deceased persons and."
XV of 1874 ...	Laws Local Extent Act, 1874 ...	So much as relates to Act XXVII of 1860.
XIII of 1879 ...	Oudh Civil Courts Act, 1879 ...	Sec. 25, clause (3), relating to applications for certificates under Act XXVII of 1860.
V of 1881 ...	Probate and Administration Act, 1881 ...	Sections 151 and 153.
XVIII of 1884 ...	Punjab Courts Act, 1884 ...	Sec. 29, sub-sec. (1), cl. (a).
XII of 1887 ...	Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 ...	Sec. 23, sub-sec. (2), cl. (c).
Act of the Lieutenant-Governor of Bengal in Council.		
VII of 1880 ...	Public Demands Recovery Act, 1880.	In sec. 7, cl. (3), the words "and the note to paragraph 12 of Schedule I."

THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See Section 11.)

In the Court of

To A.B.

Whereas you applied on the _____ day of _____ for a certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par-value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this _____ day of _____

District Judge.

THE SECOND SCHEDULE—(Concluded).

In the Court of

On the application of *A. B.* made to me on the day of , I hereby
 extend this certificate to the following debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

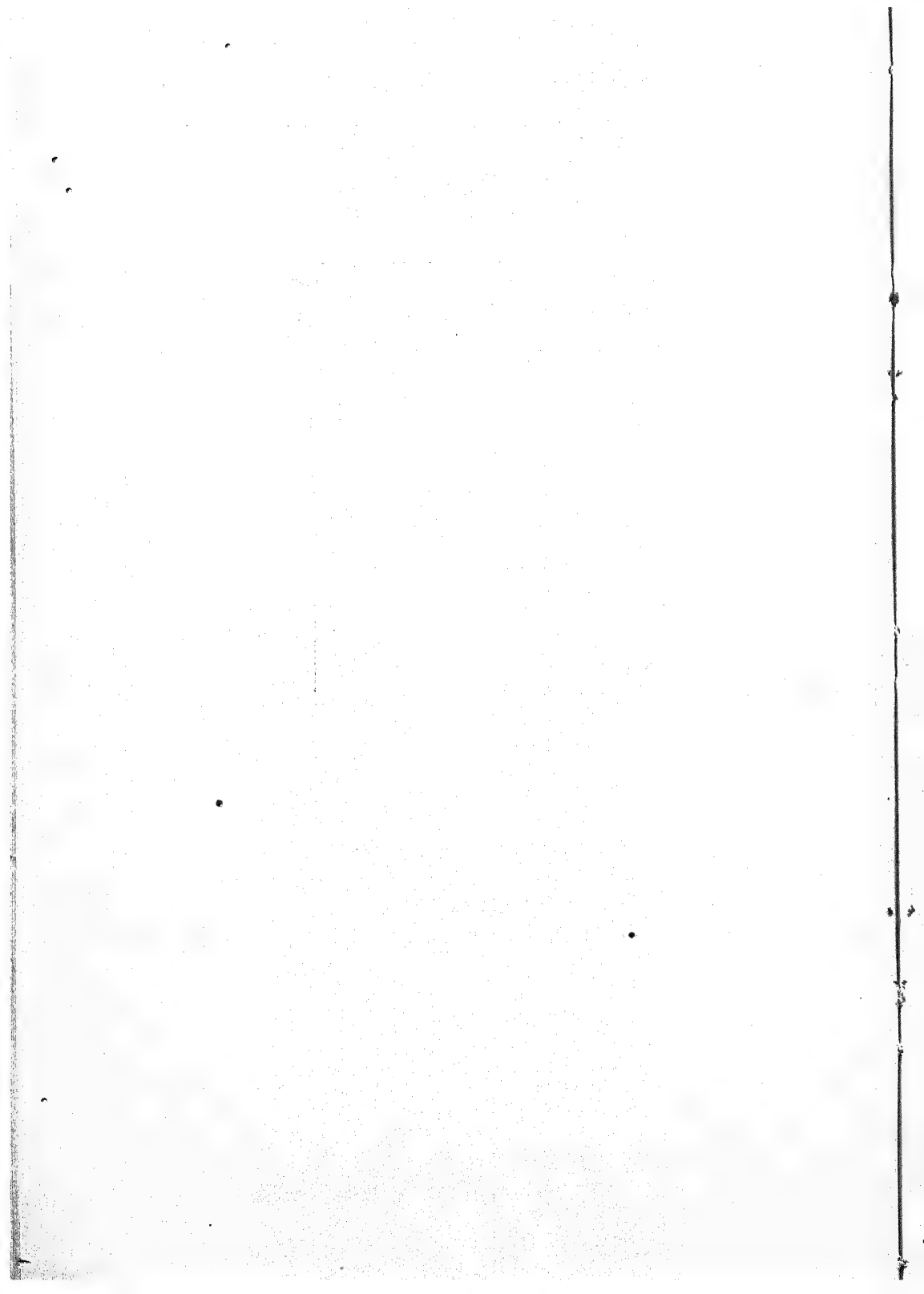
Securities.

Serial number.	DESCRIPTION.			Market value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par-value of security.	

This extension empowers *A. B.* to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this day of

District Judge.



THE SUCCESSION CERTIFICATE ACT, 1889.

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